JULY 2019

EQBOARDROOM

Bulletin

Welcome to our monthly bulletin of what's happening within the regulatory environment that impacts the share registration and employee share plans space.

PAUL MATTHEWS
CEO, EQ BOARDROOM

This month's bulletin heavily features the Department for Business, Energy and Industrial Strategy for several reasons. They've received ministerial response to their select committee proposals on audit reforms and their report on executive rewards, they've also published their own guidance on remuneration regulations, requested the ICSA to gather views on the purpose of board evaluations and seen the IA report on dividend approvals published.

Climate-related financial disclosures also make a come-back this month adding to the reporting requirements for the UK PLC and we see the first real impact of the Shareholder Rights Directive II through changes to the listing and transparency rules on related party transactions.

As always, if you have any questions on the content of this month's bulletin, please contact your Relationship Manager.

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DATES FOR YOUR DIARY

- WEDNESDAY 10 JULY
  FTSE 250 NETWORKING
  For an invitation to this event, please speak to your Relationship Manager
- WEDNESDAY 18 SEPTEMBER
  EMPLOYEE SERVICES FORUM
  If you have not received a 'Save the Date' to this event, please speak to your Relationship Manager or email eqevents@equiniti.com
- MONDAY 7 OCTOBER
  SHARE REGISTRATION CONFERENCE
  If you have not received a 'Save the Date' to this event, please speak to your Relationship Manager or email eqevents@equiniti.com

The Government respond to BEIS Select Committee proposals on Audit

The government has published its response to the Business, Energy and Industrial (BEIS) Select Committee's recent report into the future of audit.

In summary, the government's stance is to wait until the outcomes of other ongoing government consultations into audit, namely the Kingman Review and Competition and Markets Authority report, and the outcome of the Brydon review into the quality and effectiveness of audits before implementing any of the recommendations.

The government has said however that it will review further some of the recommendations in the BEIS report such as making it mandatory to have graduated findings in audit reports and to disclose available reserves and realised profits.

The government's response report is available here

Changes to the Listing and Transparency Rules on related party transactions

The Financial Conduct Authority (FCA) has published a policy statement "Proposals to Promote Shareholder Engagement: Feedback and Final Rules".

This implements provisions of the Shareholder Rights Directive II on material related party transactions and makes amendments to relevant parts of the Listing and Transparency Rules. Key items to note are:

- The definition of a related party transaction has been amended to conform with International Accounting Standards regulations
- The regime applies to both primary and standard listed companies
- The originally proposed 25% threshold for material related party transactions has been reduced to 5%
- Listed companies incorporated outside of the UK or any other European Economic Area state will have to comply even if they are subject to a similar overseas regime.

The new rules came into effect on 10 June 2019. Those companies already admitted to listing on that date must comply from the start of their first financial year on or after 10 June 2019.

The policy statement is available here

Review into the effectiveness of the Modern Slavery Act

In July 2018, the government commissioned an independent review of the Modern Slavery Act 2015 and the final review report has now been produced.

The now-published review considers specifically the role of the Independent Anti-Slavery Commissioner, transparency in supply chains, the role of Independent Child Trafficking Advocates and the legal application of the Modern Slavery Act. The review makes 80 recommendations in connection with these areas. In terms of company reporting and transparency the main recommendations made in the report are:

- The Government should establish and monitor an internal list of companies in the scope of the requirements to publish a slavery and human trafficking statement. This is because it is estimated that 40% of companies that are within scope are not producing a modern slavery statement.
- Companies should no longer be allowed to report that they have taken no steps to address modern slavery in their supply chains.
- Reporting on all six areas set out in the legislation should be mandatory and additional guidance should be provided on the information that companies are expected to provide in their statements.
- Companies should be required to refer in their annual reports to their modern slavery statement. A similar reporting duty should be imposed on non-listed companies that meet the £36 million threshold.
- Businesses should be required to have a named, designated board member who is personally accountable for the production of the modern slavery statement.
- There should be a central government-run repository to which companies are required to upload their modern slavery statements and which should be easily accessible to the public, free of charge.
- The approach to non-compliance should be strengthened using a gradual approach from initial warnings, fines, court summons and directors' disqualification.

The government is considering the review's recommendations and will respond formally in due course.

The Report is available here

Views are sought on the purpose of board evaluations

At the request of the Department of Business, Energy and Industrial Strategy, the Institute of Chartered Secretaries and Administrators (ICSA) is carrying out a consultation to assess the quality of independent board evaluations and how they may be improved. Views are being sought by the ICSA on the purpose of board evaluations and on a number of suggested actions which include:

- establishing a code of practice for the providers of board evaluation services, and formal arrangements for implementing and monitoring such a code;
- introducing voluntary principles to be applied by listed companies when engaging external reviewers to undertake board evaluations; and
- producing guidance for listed companies on the disclosure of the conduct and outcomes of the board evaluation, in accordance with the 2018 UK Corporate Governance Code.
- The consultation document also includes draft versions of a code of practice for independent reviewers and voluntary principles and guidance on disclosure for listed companies.

The consultation closes on 5 July 2019 and is available here

Investment Association report into dividend approvals

The Investment Association (IA) has published a report into the numbers of listed UK companies who pay dividends without seeking shareholder approval.

The report was requested by the Secretary of State for BEIS over concerns that a growing number of companies are not seeking shareholder approval for final dividends and are paying interim dividends instead which only require the approval of the Directors of the Company.

The main findings of the report were that:

- 121 of the 545 companies examined (22%) that paid dividends (interim or final) did not seek shareholder approval for these distributions.
- The practice of not seeking a shareholder resolution is particularly concentrated in the largest FTSE companies.
- The majority (92%) of companies not seeking a shareholder resolution on their dividend payments were distributing interim dividends only.
- 74% of the companies issuing a final or an interim dividend without seeking a shareholder vote were financial services companies.
- Over half (47 of 90) of these companies did however put forward a resolution on a 'dividend policy' which typically details the format that dividend distributions would take throughout the year.

After investigation the IA established that there were two main reasons why companies did not seek shareholder approval for their dividend payments: 1) company-specific features made paying dividends without shareholder approval appropriate, due to regulatory requirements, legal or tax structures; 2) this was in response to growing investor demand for dividends to be paid quarterly to provide a regular income stream, with the timing of the AGM vote inconvenient in relation to the timing of quarterly payments.

In response to their findings, the IA recommends that all listed companies should, as a minimum, publish a 'distribution policy'. This policy should set out the company's long-term approach to making decisions on the amount and timing of returns to shareholders, including dividends, share buybacks and other capital distributions. This will provide shareholders with an opportunity to engage with companies on their approach to shareholder distributions, regardless of the structure and timing of these distributions.

The IA is establishing a working group to develop guidance on the contents of a 'distribution policy' and also make recommendations to government on whether a shareholder vote on this policy and/or on yearly distributions should be mandatory. The IA will publish guidance in autumn 2019.

The IA's report is available here

Changes to the FCA Handbook to align with the EU Prospectus Regulation

The Financial Conduct Authority (FCA) has published near-final rule changes to be made to their Handbook to align it with the EU's Prospectus Regulation.

The objective of the changes is to introduce shorter prospectuses and less onerous requirements for smaller companies.

There will also be a simpler regime for companies that frequently list shares. In addition, prospectuses will no longer have to be submitted to the National Storage Mechanism by companies as the FCA will publish all approved prospectuses via Morningstar. The new rules on prospectuses apply from 21 July 2019.

The FCA's Policy Statement is available here

Status report published on climate-related financial disclosures

The Financial Stability Board's Task Force on climate-related financial disclosures has published its second status report which provides an overview of reporting practices in comparison with the Task Force's recommendations which it made in 2017.

The Task Force has reviewed reports for over 1,000 large companies in many sectors and regions over a three year period in conjunction with a survey of companies to establish how useful the recommendations on climate-related financial disclosures are for decision-making.

The Task Force highlights its key findings as:

- Disclosure of climate-related financial information has increased since 2016 but disclosures are still not sufficient for investors.
- More clarity is needed on the potential financial impact of climate-related issues on companies.
- Of companies that use a variety of scenarios to indicate the potential impact of climate change, the majority do not disclose information on the resilience of their strategies.
- In order for climate-related issues to become mainstream, multiple functions within companies need to be involved.

Overall the Task Force report notes some progress in implementing their recommendations in companies that have already engaged with climate-related issues but, more needs to be done.

The Task Force will publish a further status report in 2020. The status report is available here

Guidance published on the new remuneration regulations

BEIS has published guidance in the form of Frequently Asked Questions on the new reporting requirements introduced by the Companies (Directors' Remuneration Policy and Directors' Remuneration Report) Regulations 2019 (the Regulations). The Regulations require certain additional information to be included in remuneration policy reports and additional disclosures, such as the annual change of each director's pay in comparison with average employee pay and showing the split of fixed and variable pay for each director, in the annual remuneration report.

Items to note are:

- The new requirements covering the preparation and content of the remuneration policy apply to any new remuneration policy put to shareholders for approval on or after 10 June 2019. Existing policies approved before 10 June 2019 will not be affected.
- The additional disclosure requirements apply to remuneration reports for financial years beginning on or after 10 June 2019. Therefore, the first remuneration reports that will need to include the new content will cover financial years ending on or after 9 June 2020.
- The guidance confirms that the requirement to report the annual change in directors' remuneration compared to average employee remuneration applies to each individual director including non-executive directors. The comparison extends to all employees of the company. Where the company is a parent company, it covers the employees of the parent company only and not the whole group. It is important to note that the guidance states that where that parent company only employs a small proportion of the workforce, a company may choose voluntarily to disclose the change in directors' remuneration compared to a wider employee comparator group, if this will provide a more representative comparison but that this will need to be reported alongside the statutory disclosure.
- The guidance specifies that companies may calculate average employee remuneration using either the 'mean' or 'median' of employee pay as the EU Directive does not specify a method. Companies are encouraged to state which method they have used in their reports.

The BEIS FAQ is available here

Government response to report on executive rewards

The Government has published its response to the BEIS Select Committee Report – *'Executive rewards: paying for success'*. The BEIS report made 16 recommendations. The Government has largely come out in support of using existing regulatory requirements, such as the UK Corporate Governance Code, to strengthen reporting on executive remuneration and is in favour of companies and remuneration committees voluntarily complying with some of the recommendations.

For example, the government supports allowing companies flexibility over remuneration structures rather than being prescriptive. It is also not in favour of making it mandatory to appoint an employee representative to the remuneration committee noting that one method will not suit all when it comes to companies engaging with their workforce on remuneration matters. The government supports extending pay ratio reporting requirements to all employers with over 250 employees on a voluntary basis and states that it is for remuneration committees to determine whether to set an absolute cap on total remuneration for executives. Given the government's position on many of the Select Committee recommendations, it seems unlikely that further regulation on executive remuneration will be introduced in the foreseeable future.

The government's response is available here

News from across Equiniti

Equiniti nominated as Share Scheme Provider of the Year

In June it was announced that Equiniti is amongst the finalists up for Share Scheme Provider of the Year in the 2019 Workplace Savings and Benefits Awards. Graham Bull, Managing Director, All Employee Services said, *"This nomination is a testament to the value added by our Employee Services team in helping clients and their employees achieve the maximum from their share plans. We're looking forward to the events evening on Thursday 5 September!"*

Largest ever Equiniti team for the J.P. Morgan Corporate Challenge

Equiniti will have the largest team we've ever had running, jogging or walking their way around the 5.6km J.P. Morgan Corporate Challenge course this year.

262 Equiniti clients and colleagues will complete the course in our specially designed Team Equiniti running tops on Thursday 4 July in Battersea Park, London.

Team Captain, Rob Hemming (Senior Director Investor Intelligence & Business Development) said: *"Having started this event seven years ago with just myself and seven colleagues, it will be fantastic to be captain of the largest team this year. It's a really fun event and afterward, there's an opportunity to catch up socially with colleagues, friends and clients. I'm pleased to announce that this year we will be supporting the NSPCC."*

easyJet take their employee share plans to new heights

Over the last year, easyJet has won several awards from ProShare, GEO and ESOP for their diverse geographic, generational and demographic approach to their share plans.

In this case study, we explore how the airline successfully combined technology and communication to achieve their highest ever participation rates in thirteen years.

Equiniti's Phil Ainsley comments *"easyJet is pioneering in its approach to share plans and continues to push the boundaries of how low-cost airlines can engage and retain employees. No new share plans were introduced in 2018 and yet all the data shows that this was a year of incredible engagement, demonstrating the impact of continuing to build momentum using the right technology and communications."*

Read the case study here

Boudicca hosts the Women's Company Secretary Circle event

Boudicca hosted the second Women's Company Secretary Circle of the year at The Grand Connaught Rooms this month. Over 80 talented female Company Secretaries and Corporate Governance Managers (plus a couple of honorary men!) discussed the 2019 AGM season with group debates covering socio-political pressures, board accountability and shareholder activism.

To complement the evening a whitepaper was issued to attendees, the '2019 Season Trends' which will be made available in the next couple of weeks and will feature in next month's Bulletin.

To find out more about the Women's Company Secretary Circle (WoCoS) contact Boudicca: cosec@boudiccaproxy.com