



March 2017

Quoted Company Update

This publication looks at the key changes since our last Update and at future developments relevant to Official List and AIM companies.

Looking back...

GENERAL

Law Society guidance on human trafficking statements

In **December 2016**, the Law Society published guidance on the requirement to publish a slavery and human trafficking statement. This requirement has applied in respect of financial years beginning on or after 31 March 2016 to all large commercial operations (with a total annual turnover of at least £36 million) carrying on a business, or part of a business, in the UK and supplying goods or services. For further details, please see our [client note](#) on this and other reporting obligations.

Duty to disclose payment policies and performance

In **January 2017**, BEIS published [guidance](#) on this new duty which will take effect for financial years beginning on or after **6 April 2017**. All "large" companies (whether private, public, listed or unlisted) and LLPs will be required to publish half-yearly reports on the payment practices and performance in relation to their "business-to-business" contracts for goods, services or intangible assets. The definition of "large" is as under the Companies Act 2006 and includes companies satisfying two or more of the following criteria on their last two balance sheet dates: (i) turnover of more than £36m; (ii) a balance sheet total of more than £18m; and (iii) more than 250 employees. In **March 2017**, BEIS also published the final [Reporting on Payment Practices and Performance Regulations 2017](#), which will implement the new duty. There are also equivalent regulations for LLPs. For further details, please see our [client note](#) on this topic.

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LOOKING FORWARD

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TAKEOVERS

Takeover Panel statement on cold-shouldering

In **January 2017**, the Takeover Panel published a [Panel Statement](#) imposing a six year "cold-shouldering" period on Mr Bob Morton and a two year period on Mr John Garner in relation to Hubco Plc, on the basis that they had systematically provided to the Panel information which they knew to be false in the course of an investigation into a potential breach of an obligation to announce a mandatory offer under Rule 9 of the Takeover Code. "Cold-shouldering" is the most serious disciplinary power which the Panel can exercise and has only been used twice before. While the sanction is in place, under the rules of the FCA and certain other professional bodies, their members become obliged not to act for that person in a Takeover Code transaction.

High Court ruling on share splitting

In **February 2017**, the High Court gave its first ruling on the validity of "share splitting" in the context of a scheme of arrangement. The "share splitting" in this case involved over 400 shares being transferred from a single shareholder to a large group of individuals who opposed the scheme, whereby Severn Trent Water would acquire all the voting shares of Dee Valley Group Plc. This issue is relevant because a scheme requires the approval of the majority in number (as well as 75% in value) of voting shareholders. The Court held that the Chairman of Dee Valley had been right to disregard the transferees' shares and sanctioned the scheme. Travers Smith acted for Dee Valley. For further details, please see our [client note](#) on this topic.

LISTING RULES AND AIM RULES

AIM Regulation statement on social media

In **December 2016**, AIM regulation published an ["Inside AIM" update](#) on how social media interacts with an AIM company's disclosure obligations. The statement focuses on two key points:

- Disclosure by social media alone is not sufficient. The fact that information released through "other outlets" (e.g. Twitter) may be, or may eventually become publicly available, is not a substitute for making an announcement under the AIM Rules no later than the information is disclosed elsewhere.
- The company's systems, procedures and controls should take into account the use of social media and other forms of electronic communication used by the company.

ESMA publications

In **January 2017**, ESMA published an updated [Q&A on MAR](#), which includes new questions on PDMM transactions, investment recommendations and investment strategies. In **February 2017**, ESMA also published a practical [guide](#) to national rules across the EEA on major shareholder notifications. The guide includes a fact sheet for each country.

Changes to DTR

Changes to [DTR 2.5](#) (delaying disclosure of inside information) to comply with ESMA's guidelines took effect on **24 February 2017**. The rules refer to the [ESMA guidelines](#), which contain a non-exhaustive list of the legitimate interests of issuers to delay disclosure of inside information and situations in which delayed disclosure is likely to mislead the public. Further changes to the DTRs are in the pipeline (please see below).

Market abuse

In **March 2017** the FCA [announced](#) that Tesco plc and Tesco Stores Limited (together, "Tesco") have agreed that they committed market abuse in relation to a trading update published in August 2014, which gave a false or misleading impression about the value of publicly traded Tesco shares and bonds. Tesco have agreed to pay compensation to investors who purchased Tesco shares and bonds on or after the date of this statement and who still held those securities when the statement was corrected in September 2014. The FCA estimates that

the total amount of compensation payable will be approximately £85m plus interest. This is the first time the FCA has used its powers under the Financial Services and Markets Act 2000 to require a listed company to pay compensation for market abuse. The FCA's [final notice](#) provides further details.

CORPORATE GOVERNANCE

Investment Association guidelines on viability statements

In **November 2016**, the Investment Association published new [guidelines](#) setting out the expectations of institutional investors in relation to viability statements prepared by companies in accordance with the UK Corporate Governance Code. The guidelines include recommendations relating to the period of the viability assessment, and the prospects and risks.

PLSA updated guidelines

In **January 2017**, the Pensions and Lifetime Savings Association ("PLSA") (formerly the NAPF) published its [Corporate Governance Policy and Voting Guidelines 2017](#). The key changes from the previous version relate to:

- accountability over executive pay – the guidelines list further circumstances warranting a vote against the pay policy;
- diversity – there is still room for improvement in meeting the target set out in Davies Report (33% of women on FTSE boards); and
- reporting – better reporting is needed on a company's corporate culture workforce and working practices.

ISS updated policy

The Institutional Shareholder Services ("ISS") published its [Proxy Voting Guidelines updates](#), which took effect from **1 February 2017**, other than in relation to one change on the board and committee composition of smaller companies (which will take effect in February 2018).

ACCOUNTS AND AUDIT

Non-financial information statement

[The Companies, Partnerships and Groups \(Accounts and Non-financial reporting\) Regulations 2016](#) impose an obligation on traded companies (i.e. Official List but not AIM companies) to include in their strategic report a "non-financial statement", for financial years beginning on or after **1 January 2017**. For further details, please see our [client note](#) on this and other reporting obligations.

Audit tenders: IA guidelines

In **February 2017**, the Investment Association published [guidelines](#) on audit tenders, setting out the expectations of its members when companies tender their audits. The Guidelines apply to companies listed on the Official List, AIM and High Growth Segment.

Looking forward...

GENERAL

Brexit

To obtain the latest Brexit-related news, guidance and analysis please visit our [webpage](#).

LISTING RULES AND AIM RULES

Further changes to DTR

At the end of 2016, changes were proposed to [DTR 6](#) in relation to the filing of regulated information - this consultation closed on 2 February 2017. The proposed changes contemplate companies being required to notify the FCA of their "legal entity identifier" (a unique ID code) and to classify regulated information when it is filed with the FCA.

Changes to Listing Rules

In **February 2017**, the FCA launched a [consultation](#) on amendments to the Listing Rules – this closes on 14 May 2017. The proposed changes include:

- clarifying eligibility requirements for a premium listing;
- changes to class tests, including a change to the approach to the profits test to permit issuers to disregard the profits test or adjust the figures used in certain circumstances where the result is anomalous;
- adjustments to the figures used to classify assets and profits for the purposes of the class tests; and
- changing the FCA's approach to suspending shares where a reverse takeover is contemplated.

Changes to Prospectus Rules

In **March 2017**, the FCA published a [consultation](#) on proposed changes to the Prospectus Rules in anticipation of the entry into force of the EU Prospectus Regulation later this year, which will replace the current prospectus regime. The consultation closes on 3 May 2017. Most of the articles of the Regulation will apply 24 months after the Regulation comes into force; however, there are a couple of changes relating to the exemptions from the requirement to publish a prospectus for admission to trading to a regulated market, which will be effective immediately upon the Regulation coming into force:

- the current exemption which applies where a listed company is issuing further shares representing 10% or less of its share capital, is being increased to 20% and expanded to apply to securities, rather than only shares; and
- a change to the current exemption in relation to shares resulting from the conversion or exchange of other transferable securities (where shares are of the same class as those already admitted to trading) so that there will be a limit on such conversion/exchange shares of up to 20% of the number of shares of the same class already admitted in any period of 12 months.

CORPORATE GOVERNANCE

BEIS Green Paper on corporate governance reform

Towards the end of 2016, BEIS published a [Green Paper on corporate governance reform](#) covering three key issues:

- executive pay;
- strengthening the stakeholder voice at boardroom level; and
- corporate governance for private companies.

This consultation closed on 17 February 2017 and various bodies, such as the CLLS, have responded.

FRC review of UK Corporate Governance Code

The FRC has [announced](#) that it will be consulting on changes to the UK Corporate Governance Code later this year. It will also be updating its Guidance on Board Effectiveness.