



Quoted Company Update

June 2015

This Update looks at the key changes since our January 2015 Update and future developments relevant to Official List and AIM companies.

Looking back...

FCA and Listing Rules

Reckitt Benckiser fine for breach of Model Code

On **13 January 2015** the FCA [fined](#) Reckitt Benckiser Group Plc £539,800 for failing to have adequate systems and controls in place to monitor share dealings by directors and other persons discharging managerial responsibilities ("PDMRs"). PDMRs dealt in the company's shares in breach of the Model Code. In light of this decision, companies should ensure that they maintain, adhere to and refresh their share dealing policies, maintain written records of clearance requests and have procedures in place to ensure timely disclosures to the market.

PDMR disclosures – FCA clarification

In **March 2015**, the FCA clarified in an amended [technical note](#) that, notwithstanding delegation to third parties, PDMRs are responsible for satisfying the FCA's notification requirements (under Chapter 3 of the Disclosure Rules and Transparency Rules) and remain liable if notification is not made.

Changes to the Listing Rules and Prospectus Rules

Changes to the [Listing Rules](#) took effect on **1 April 2015** – these affected the rules on:

- sponsors (as a result of the FCA consultation on joint sponsors);
- the scope of circulars requiring the FCA's prior approval; and
- changes to the vetting arrangements for materials changes to the investment policy of closed-ended investment funds.

On **31 March 2015**, minor changes also took place to the Prospectus Rules relating to the final terms of a prospectus.

AIM Disciplinary notice

In **March 2015**, a nominated adviser was privately [censured](#) and fined £90,000 by the LSE. The LSE reminds nomads that where a company notifies a matter which is likely to occur on a specific date in the future and there is a change to the timing, the company is required to consider whether an update is required and where such change may mean that the original notification is misleading.

Inside information – enforcement actions

In **March 2015**, the FCA brought a few enforcement actions. Paul Coyle, the former treasurer and Head of tax at WM Morrison Supermarket plc was [sentenced](#) to 12 months' imprisonment for insider dealing, and ordered to pay a confiscation order of over £200,000. Ryan Willmott, the former group reporting and financial planning manager for Logica plc, was [sentenced](#) to 10 months' imprisonment and a confiscation order of over £23,000, whilst his family friend, Mr Carver (a retired accountant), was [fined](#) £35,212 for trading on the basis of information provided by Mr Willmott. The FCA has said that the custodial sentences are a "reminder of the serious consequences for insider dealing".

Corporate Governance

Revised Pre-emption Group Statement of Principles

In **March 2015**, the Pre-emption Group published a revised [Statement of Principles](#) for the disapplication of pre-emption rights, which replaced the 2008 version. The revised Statement confirms the key thresholds for the general dis-application of pre-emption rights (i.e. 5% of issued share capital on an annual basis and a 7.5% over a rolling 3 year period). However, it allows companies to take authority over an additional 5% of its issued ordinary share capital in any one year in connection with an acquisition or specified capital investment (as defined in the appendix to the Statement). Companies should remember this change, which is intended to allow companies the opportunity to finance expansion opportunities as and when they arise, when drafting their AGM notices. The Principles now state for the first time that cashbox structures – which have in the past been seen by institutional investors as structures designed to circumvent statutory pre-emption rights – are included within their scope. The Statement applies to all premium-listed companies, whilst AIM companies are encouraged to adopt the principles.

Notice periods for general meetings

In **April 2015**, ICSA published a [guidance note](#) on this topic, reminding companies that the UK Corporate Governance Code requires 14 working days' notice of general meetings. This requirement (in Provision E.2.4) was introduced by the Financial Reporting Council, without consultation, in the October 2014 edition of the Code. ICSA recommends that companies use the shorter statutory 14 clear day period only in situations of urgency.

Takeovers

Prohibition of takeovers by cancellation scheme

On **4 March 2015**, the Government published the [final regulations](#) prohibiting a company from reducing its share capital using a cancellation scheme of arrangement in connection with a takeover of another company. Following this change, we have seen takeovers being effected by way of transfer schemes where a scheme of arrangement is to be used. The regulations do not affect cancellation schemes being used for other purposes such as intra-group restructurings, demergers or returns of capital.

Looking forward...

Company law

Small Business, Enterprise and Employment Act 2015 – relevance to listed companies

The [Small Business, Enterprise and Employment Act 2015](#), which received Royal Assent in March 2015, will be brought into force in stages, with a few provisions having already come into force in May 2015 and the last stage of implementation being April 2016. A couple of points are relevant for listed companies:

- Firstly, the Act will introduce a prohibition on corporate directors. BIS has moved away from a long list of exemptions to this prohibition (which included listed companies) and is now taking soundings on a single blanket exemption, whereby corporate directors will be permitted provided all of the directors of the corporate director entity are "natural persons" (i.e. individuals), and the law under which the corporate director is established (if not the UK) requires certain identification details of the directors to be kept in a publicly accessible register. These provisions are due to come into force in **October 2015**.
- Secondly, from **January 2016**, companies will be under an obligation to disclose the identity of the beneficial owners of their shares in a new publicly-available register (the Register of Persons with Significant Control, to be known as the "**PSC Register**"). Both Official List and UK-incorporated AIM companies will be exempt from this obligation, on the basis that they are subject to disclosure requirements under DTR 5; however, non-listed subsidiaries of listed companies will be caught. Please look out for our client briefing on this topic, which will be sent out shortly.

New obligation to report on payment policy and practice

BIS has been looking at the problem of late payment for small and medium enterprises and has decided that the best way to encourage large companies (which are likely to include all Official List companies) not to delay payment to small

suppliers is to require them to disclose their payment policies and practices on a half-yearly basis, so that the market will be able to identify good and late payers. The reporting requirement would cover standard payment terms; the average time taken for invoices to be paid; and the proportion of invoices paid within certain periods. Further details will be set out in future regulations to be enacted under the Small Business, Enterprise and Employment Act 2015.

Takeovers

Takeover Panel consultation on dividends

In **May 2015**, the Takeover Panel published a [consultation paper](#) proposing to amend the Takeover Code to clarify its practice relating to the treatment of target company dividends. The proposed changes include clarifying the circumstances in which a bidder will be able to reduce the bid consideration should a target company subsequently pay a dividend. The consultation also contains a draft new Practice Statement setting out the Panel Executive's practice in relation to the payment of target company dividends and the application of Rule 21.2 (inducement fees and other offer-related arrangements) in relation to the payment of target company dividends. The consultation closes on **12 June 2015**, and the amendments are likely to come into force in the autumn. Please click [here](#) for our client briefing on this topic.

Accounts

BIS consultation on supplementary information

In **March 2015**, BIS published an [updated supplementary information document](#) to support its consultation on the UK implementation of the EU directive amending the Statutory Audit Directive. The document mainly covers the framework for audit tendering and auditor rotation and seeks to answer queries raised since the launch of the consultation. The consultation has now closed and the Government plans to consult on the regulations again in the summer.

EU Accounting Directive – implementing regulations published and consultation on new UK GAAP

The Government published the final [Companies, Partnerships and Groups \(Report and Accounts\) Regulations 2015](#) which implement provisions of the EU Accounting Directive in the UK. The regulations came into force on **6 April 2015** and companies will be required to apply the new financial reporting framework for **financial years beginning on or after 1 January 2016**. However, companies may voluntarily adopt the framework earlier.

In February 2015, the Financial Reporting Council published a [consultation](#) on amendments to UK GAAP, which have been proposed as a result of the implementation of the EU Accounting Directive. The consultation closed in April 2015 and the final standards are expected to be issued in July 2015. They are intended to be effective for **accounting periods beginning on or after 1 January 2016**. Again, companies may adopt them earlier.

Changes to EU Directives

Changes to the Prospectus Directive

In February 2015, the European Commission published a [consultation paper](#) on the review of the Prospectus Directive, seeking views on the triggers for producing a prospectus, the information to be contained in a prospectus and the approval process. The consultation closed on 13 May and the Commission intends to finalise its proposals by **early 2016**.

Changes to the Transparency Directive

In March 2015, the FCA and HM Treasury published a joint [consultation paper](#) on the implementation of the EU Directive amending the Transparency Directive. Implementation will involve amendments to the Financial Services and Markets Act 2000 and the FCA's Disclosure Rules and Transparency Rules (including changes to the deadline for publishing half-yearly reports and changes to the requirement to disclose voting rights arising from the holdings of financial instruments having a similar economic effect to holding shares). The UK has already implemented a couple of aspects of the new Directive ahead of the deadline, namely the abolition of interim management statements and the extractive industry reporting requirements. The rest of the Directive must be implemented by **25 November 2015**.