



Ashurst Governance & Compliance Update – Issue 55

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Equity Capital Markets

1. Reform of the offering regime takes a further step forward

The Financial Conduct Authority has published two consultation papers on its proposals for the new **Public Offers and Admissions to Trading Regulations (POATR)** regime:

- [CP24/12](#) sets out the FCA's proposals for when companies will need to produce a prospectus for the admission of securities to UK regulated markets or certain 'primary' multilateral trading facilities (MTFs), such as AIM, in addition to detailed requirements for the content of prospectuses for regulated markets.
- [CP24/13](#) sets out proposed rules for the new regulated activity of operating a public offer platform which, under the new regime, can be used to facilitate higher-value (above £5m) public offers by issuers to investors of securities that are not being admitted to a market.

In conjunction with the POATR, the FCA's final rules in these areas will replace the current UK Prospectus Regulation in due course. The consultation period closes on 18 October 2024.

For our more detailed overview of the proposals, [click here](#).

The FCA has indicated that it will undertake a follow-up consultation later this year in respect of, amongst other things, certain transitional provisions and minor changes to make the applications process for further issuances more efficient.

It is envisaged that the rules for the overall regime will be finalised by the end of H1 2025, subject to feedback and the approval of the FCA Board. The FCA has also signalled that there will be a further period before the new rules take effect.

2. FCA consults on the National Storage Mechanism

The FCA has [published](#) a consultation focused on enhancing the operation of the National Storage Mechanism (**NSM**). By way of reminder, the NSM is the FCA's free-to-use online archive of company information which enables users to access and download information about issuers.

The FCA is consulting on changes to the NSM's data requirements for 'regulated information' – i.e. information disclosed by regulated market issuers in accordance with the Disclosure Guidance and Transparency Rules, Listing Rules, and parts of the Market Abuse Regulation. It also proposes to standardise the way in which Primary Information Providers – those firms approved to disseminate regulated information on behalf of issuers – submit information to the NSM.

Responses to the consultation should be submitted by 27 September 2024.

3. FCA reforms rules on paying for investment research

The FCA has [published Policy Statement 24/9: Payment optionality for investment research \(PS 24/9\)](#), in order to afford asset managers greater freedom in how they pay for investment research, by allowing the 'bundling' of payments for research and trade execution. PS24/9 aims to improve competition in the market for the benefit of investors and the new payment optionality is stated as being compatible with rules in other jurisdictions, making it easier for asset managers to buy research across borders. For more detail on PS 24/9, [click here](#).

The new rules, which took effect on 1 August 2024, implement a key recommendation of the Investment Research Review (for our overview, [click here](#)) which itself derives from the 2022 Edinburgh Reforms (for our overview, [click here](#)).

Narrative Financial Reporting

4. BVCA and PERG consult on changes to Walker Guidelines

The British Private Equity and Venture Capital Association (**BVCA**) and the Private Equity Reporting Group (**PERG**) have [published](#) a consultation to review and update the **Walker Guidelines on Disclosure and Transparency in Private Equity (Walker Guidelines)**.

By way of reminder, the Walker Guidelines are the voluntary code containing enhanced disclosure and reporting requirements for private equity firms and their largest portfolio companies. It was last updated in 2014.

The latest review is intended to ensure the original objectives of the Walker Guidelines are still being achieved, namely to:

- demonstrate a commitment to transparency for the private equity industry by publishing relevant information on its largest UK portfolio companies; and
- provide data to enable a better understanding of how the private equity industry operates and contributes to the UK economy.

The review therefore covers both the scope and specific requirements of the Walker Guidelines, seeking to ensure that the scope appropriately captures large private equity investment activity in the UK and that portfolio companies and private equity firms disclose information that is clear, accessible and valuable. The review also aims to ensure that narrative reporting for in-scope companies evolves in line with good practice seen amongst constituents of the FTSE 250 (deemed to be the most appropriate benchmark) and is calibrated to the current reporting environment. Specifically, the changes contemplate greater

disclosure around board composition, ownership structures and management activity as well as risk management, internal controls and ESG matters.

The consultation also takes into account proposals for reform included in the draft Audit Reform and Corporate Governance Bill announced in the King's Speech in July 2024 (see [AGC Update, Issue 54](#)).

The consultation closes on 30 September 2024. PERG and the BVCA will publish a feedback statement summarising responses to the consultation later this year. Revised Walker Guidelines will be published in January 2025 alongside PERG's 17th annual report on compliance.

5. FRC consults on updated going concern guidance

The Financial Reporting Council has [published](#) a consultation on revisions to its 2016 Guidance: **Going Concern Basis of Accounting and Related Reporting, including Solvency and Liquidity Risks**. The Guidance is being updated to reflect recent developments in the corporate reporting framework and evolving practice in response to economic and operational uncertainties such as the COVID-19 pandemic and geopolitical conflicts, as well as high-profile UK corporate failures.

The [draft Guidance](#) is intended to help companies prepare high-quality, company-specific disclosures about their going concern conclusions and how they were reached. In turn, this should allow investors to understand a company's exposure to and plans to navigate solvency and liquidity risks and provide them with the confidence to allocate capital and support the growth of UK companies.

As before, the updated Guidance will be non-mandatory for those companies within its scope, which includes companies that apply the UK Corporate Governance Code, but excludes small companies and micro-entities. The Guidance includes a revised range of factors and techniques directors might consider when performing going concern assessments.

The Guidance brings together the requirements or provisions of company law, accounting standards, auditing standards, the Listing Rules, the UK Corporate Governance Code and other relevant regulation.

The consultation closes on 28 October 2024. The FRC expects to publish the final Guidance in early 2025.

6. Wates Principles: FRC publishes second report on quality of reporting

The FRC has [published](#) a second report on the quality of corporate governance reporting by private companies which apply the [Wates Corporate Governance Principles for Large Private Companies](#).

By way of reminder, the Wates Principles were published to accompany the package of governance reforms implemented through [The Miscellaneous Reporting Regulations 2018](#) which included a requirement for large companies to report on their governance arrangements in their annual report and accounts. Large companies for this purpose are those which have more than 2000 employees and/or both a turnover of more than £200m and a balance sheet total of £2bn. The Principles operate on an 'apply and explain' basis.

The FRC report notes that of 1,815 in-scope private companies, 547 (approximately 30 per cent) applied the Wates Principles. Of those that followed the Wates Principles, the research found slight

improvements in most of the disclosure scores for each Principle. For example, more companies reported on how their purpose aligned with their business practices and on the connection between their strategy and purpose/culture. More information was also included about company Chairs, how the board understands the company's business needs and stakeholder interests, and the rationale for remuneration structures.

Nevertheless, the report highlights that companies continue to struggle to provide meaningful disclosures in key areas and provides suggestions for improvement, including in relation to:

- Company purpose and connecting purpose to strategy, culture and values.
- Board composition.
- Director roles and responsibilities, independence and diversity.
- Risk mitigation and opportunity detection.
- Remuneration and philosophy on pay.
- Stakeholder engagement and its impact on board decision-making.

The report also suggests there is an over reliance on boilerplate disclosure given the high levels of similarity between the corporate governance statements of different companies, as well as between reports by the same company in different years.

7. The future UK digital reporting – discussion paper published

As part of a cross-regulatory group comprising the FCA, Companies House, HMRC and the Charity Commission, the FRC has [published](#) a discussion paper on opportunities for the future UK digital reporting. The paper also addresses changes in the post-Brexit regulatory landscape and considers the impact of the Economic Crime and Corporate Transparency Act 2023.

Key topics covered in the discussion paper include:

1. Potential alternatives to the European Single Electronic Format taxonomy for UK regulated markets.
2. Proposed changes to structured digital reporting to support regulatory disclosure initiatives - for example, by extending the required tagging of an issuer's annual report to areas outside of the financial statements or to other sources of regulated information required by the FCA Handbook or the UK Market Abuse Regulation.
3. Considerations for mandatory assurance of digital tagging.
4. The impact of "full tagging" requirements on companies and charities.
5. Strategies to support stakeholders in adapting to new digital reporting requirements.

Responses should be submitted to XBRL@frc.org.uk by 1 November 2024.

Stewardship

8. FRC announces significant review of the UK Stewardship Code

As promised in its 2023 [Policy Statement](#), and now that the revised UK Corporate Governance Code has been published, the FRC is undertaking a fundamental review of the [UK Stewardship Code 2020](#) (Code)

to ensure that it 'supports growth and the UK's competitiveness' and is being used to drive 'better stewardship outcomes from engagement with issuers across all asset classes'.

To that end, the FRC has [announced](#) significant revisions to the Code application process and committed to focus on five themes in the new phase of the Code's development:

- **Purpose** – The FRC will consider all stakeholder views and set out its expectation of what defines effective stewardship, what this looks like in practice, and how reporting against the Code can help to deliver this.
- **Principles** – The FRC is considering what reporting will be necessary to deliver on a renewed purpose of the Code.
- **Proxy Advisors** – The FRC will carefully consider how the Code might support greater transparency of their activities.
- **Process** – The FRC will take forward proposals to reduce the reporting burden currently associated with being a Code signatory and ensure that information included in reports is useful and accessible to all underlying investors and other stakeholders.
- **Positioning** – The FRC is working with other regulators such as the Department of Work and Pensions, The Pensions Regulator and the FCA to support clarity in understanding the revised Code and ensure its successful implementation. The Code will continue to support the objectives of those other regulators to avoid any confusion and duplication that signatories may encounter.

Pending the full review of the Code being finalised and implemented, the FRC has also made [various interim changes](#) (and has published associated [FAQs](#)) to reduce the reporting burden on existing signatories pending the full review of the Code. These changes:

- remove the requirement to disclose annually all 'Context' reporting expectations, except for new reports or material changes;
- remove the requirement to disclose annually against 'Activity' and 'Outcome' reporting expectations for some Principles;
- allow use of content from previous reporting and cross-referencing of such reports;
- set clear expectations of what is considered an 'outcome' for stewardship purposes; and
- emphasise the ability to report 'where necessary' against Principles 10, collaborative engagement, and 11 escalation.

The interim changes apply to the next signatory application window (31 October 2024) and the FRC will be writing to signatories individually to inform them of how the changes impact them.

The FRC will launch a formal public consultation on the Code later in 2025.

Corporate Transparency

9. ECCTA: Companies House publishes business plan 2024 to 2025

Companies House has [published](#) its business plan 2024 to 2025 which includes an outline of what it plans to deliver in relation to the Economic Crime and Corporate Transparency Act 2023 over the coming months. For our overview of the legislation, see [New economic crime and corporate transparency law: Key implications for UK businesses \(10/11/23\)](#) and [AGC Update, Issue 47 \(see Item 1\)](#).

The business plan indicates that Companies House plans to undertake the following:

- **Company information:** Prioritise cleaning up existing information on registers by identifying and removing inaccurate information, querying and rejecting information where it is clearly false, misleading or suspicious; expedite striking off companies where Companies House has evidence of fraudulent information; require companies to confirm that they are being formed for a lawful purpose at incorporation, with an annual confirmation of that continued lawful purpose as part of a company's Confirmation Statement.
- **Company addresses:** Require companies to provide a registered email address and an 'appropriate' registered office address. As part of that, companies will be prohibited from using PO boxes as their registered offices by the end of March 2025.
- **Director verification:** Develop the identity verification processes needed to verify the identity of directors by the end of March 2025 as well as introducing a registration process for third party agents to become authorised corporate service providers or 'ACSPs'.
- **Corporate directors:** Begin to develop process changes to impose limits on the use of corporate directors.
- **Preventing the abuse of personal information:** Continue to develop processes to enable the suppression of personal information from the register.

Corporate Governance

10. GC100 launches poll on minute-taking and the use of AI

GC100, the association of general counsel and company secretaries working in FTSE 100 companies, is [conducting](#) a poll about the use of AI and legal technology to support the minute-taking process among listed and larger private companies.

The poll focuses on the approach of companies to minute-taking, including format, approval processes, the extent to which AI assists with these processes, and the issues associated with the use of AI and third-party suppliers of legal technology.

Responses should be submitted by 6 September 2024. A summary of the responses will be circulated to respondents.

Regulation in Practice

11. FRC publishes Annual Audit Enforcement Review 2024

The FRC has [published](#) its sixth Annual Enforcement Review, setting out its enforcement activity during the year ended 31 March 2024. This year's review identifies key themes and lessons emerging from enforcement cases which concluded during the year, including the audit investigations launched following the corporate failures of Carillion plc in 2018 and London Capital & Finance plc in 2019.

Dormant assets scheme

12. Government publishes template constitutional provisions to deal with 'gone-away' shareholders

The government has [updated](#) its **Webpage: Dormant Assets Scheme** and published a '[Dormant Assets Scheme: Participant pack](#)' for use by companies with publicly traded securities wishing to participate in the UK dormant assets scheme in relation to 'gone-away' shareholders – i.e. those shareholders with whom the company has lost contact. The pack of materials contains:

- Draft explanatory notes for inclusion in an AGM circular or circular to shareholders proposing possible changes to a company's Articles of Association to facilitate participation in the dormant assets scheme; and
- Draft Supplementary Articles of Association, providing a possible template for prospective participants to adapt and adopt to facilitate their participation in the scheme and which, in effect, would allow the company to sell shares deemed to be dormant and transfer the proceeds (including unclaimed dividends) to the authorised reclaim fund operated under the scheme.

The templates are intended to be used as a starting point for companies to adapt to their individual circumstances as required.

Financial Reporting

13. FRC publishes amendments to FRS 101 Reduced Disclosure Framework

The FRC has [published](#) minor Amendments to FRS 101 Reduced Disclosure Framework following the 2023/24 annual review cycle. The associated Feedback Statement and Impact Assessment can be found by [clicking here](#).

Changes include a disclosure exemption from presenting certain comparative information, and a conditional exemption for qualifying entities in respect of certain disclosures about supplier finance arrangements required by IAS 7 Statement of Cash Flows.

Amendments were also made to Appendix II Note on Legal Requirements for consistency with IAS 1 Presentation of Financial Statements.

EU Sustainability Reporting

14. European Commission publishes FAQs to help in-scope companies with CSRD compliance

The European Commission has [published](#) an FAQs document to support companies reporting under the Corporate Sustainability Reporting Directive 2022 ((EU) 2022/2464).

The FAQs clarify the interpretation of certain sustainability reporting requirements introduced by the CSRD into the Accounting Directive (2013/34/EU), the Audit Directive (2006/43/EC), the Audit Regulation ((EU) No 537/2014), and the Transparency Directive (2004/109/EC) as well as clarifying certain provisions of the Sustainable Finance Disclosures Regulation ((EU) 2019/2088) (SFDR). The FAQs also clarify provisions in the European Sustainability Reporting Standards, which set out the detail of the reporting required under the CSRD (see [First European Sustainability Reporting Standards \(ESRS\) apply from 1 January 2024 \(ashurst.com\)](#)).

The FAQs cover issues such as the scope of the rules, application dates, exemptions, language requirements, formats and digital tagging, and use of estimated data in substitution for collecting value chain information from suppliers or business partners. There is also a section on requirements for non-EU companies.

By way of reminder, the first in-scope companies to report under CSRD will do so in 2025 for financial years beginning on or after 1 January 2024.

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