

MACFARLANES

## Corporate Law Update: 16 - 22 November 2024

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22 November 2024

### FCA publishes guidance on Market Abuse Regulation compliance

The Financial Conduct Authority (FCA) has published Primary Market Bulletin 52, in which it has given guidance to issuers on compliance with the UK Market Abuse Regulation (UK MAR).

The first part of the bulletin **highlights certain observations** by the FCA from its recent monitoring and enforcement work in relation to disclosure of inside information. The observations relate to three particular topics: takeover offers, periodic financial information, and CEO movements.

- **Takeover offers.** The FCA advises issuers to consider whether a disclosure obligation under UK MAR arises each and every time they receive a takeover offer, including an increased offer from the same potential offeror. An issuer should not delay disclosure merely because it has not yet accepted a final offer or because disclosure is not specifically required under the Takeover Code.
- **Periodic financial information.** Where board papers reveal that an issuer is unlikely to meet internal forecasts or external consensus estimates, the issuer should not delay disclosure merely in the expectation that it will be compensated by significant over-performance later in the year. Delaying disclosure is possible only if the conditions in UK MAR are met. If they are not, an issuer will need to disclose the information in their scheduled results announcement as soon as possible.
- **CEO resignations and appointments.** The FCA has given detailed guidance on factors issuers should consider when determining whether to disclose the actual or prospective resignation or appointment of a CEO. The resignation and appointment are separate items of inside information, and there is no automatic ability to delay disclosure. Issuers may be required to make an announcement before a CEO has formally resigned or before an appointment has been made.

The FCA has set out suggested steps issuers can take to ensure compliance with UK MAR. These include establishing a disclosure committee, ensuring the CFO, CEO and company secretary can make announcements outside normal reporting timetables, and documenting the reasons for classifying information as inside information and for its disclosure.

The second part of the bulletin addresses the **dissemination of information by issuers** during shareholder calls and meetings.

The FCA acknowledges that issuers may utilise a variety of methods to engage with shareholders or subsets of shareholders, including through private calls or using communications apps, such as Whatsapp, Telegram and LinkedIn.

It notes that the risk of sharing inside information selectively with investors is increased in this context. In particular, it warns issuers that any comments on the trading of their shares could amount to market manipulation, and that shareholders may perceive statements made by management during the communication to be price sensitive and/or material new information even when they are not.

The FCA has set out suggested steps issuers can take to mitigate these risks. These include avoiding scheduling calls or communications during closed periods, instead scheduling communications for shortly after publication of a financial report or market update, and reiterating at the beginning of communication sessions that no inside information will be disclosed.

[Read FCA Primary Market Bulletin 52 on complying with the UK Market Abuse Regulation](#)

## **Government outlines next steps for PISCES private trading perimeter**

The Treasury has published its official response to its March consultation on establishing a new private intermittent securities and capital exchange system, known as “PISCES”.

[Read our separate in-depth piece for more information on PISCES and the Treasury’s original consultation.](#)

Broadly speaking, the Treasury has decided to proceed with establishing PISCES as set out in its original consultation. However, following feedback, it has decided to make some changes to the way in which PISCES will operate.

- Employees of companies that participate in PISCES will be eligible to buy securities through the platform. Previously, the Treasury had been inclined to allow employees to sell securities, but to let only sophisticated investors and high-net worth individuals to acquire securities.
- Following feedback, the Treasury has decided not to create a PISCES-specific market abuse regime based on the regime for the capital markets. Instead, the Financial Conduct Authority (FCA) will be given powers to craft a bespoke disclosure regime, under which information will be shared with all investors participating in a PISCES “trading event”, but not with the wider public.
- As a result, the Treasury will not be incorporating any transaction-reporting requirements into the PISCES framework. However, the FCA will consider whether to set record-keeping rules.
- Companies will not be able to carry out share buy-backs on PISCES. However, the Government will explore whether to allow this at a later stage, following the initial sandbox launch.

The Treasury has also published a policy note on how it intends to legislate to implement PISCES.

The most significant change to the proposed regime is the Treasury’s new approach to market abuse. There had been concerns that a regime modelled around the UK Market Abuse Regulation would be unduly burdensome to private companies.

We also previously commented that the Treasury’s original proposal that PISCES companies would not be permitted to delay disclosing inside information could result in participant companies being forced to diligence, negotiate and conclude transactions wholly between trading windows.

By devolving the power to deal with market abuse to the FCA, the hope is that the regulator will be able to respond to market feedback and developments to craft a more proportionate and suitable regime.

The Treasury has published draft regulations to implement PISCES and asked for comments by 9 January 2025.

[Access HM Treasury's formal response to its consultation on the PISCES framework \(opens PDF\)](#)

[Access HM Treasury's original consultation on the PISCES trading framework \(opens PDF\)](#)

[Read HM Treasury's policy note on legislating for the new PISCES trading framework \(opens PDF\)](#)

[Access the draft legislation for the new PISCES trading framework \(opens PDF\)](#)

## **Glass Lewis publishes 2025 voting guidelines**

Shareholder proxy advisor Glass Lewis has published its 2025 UK Benchmark Policy Guidelines.

The Guidelines set out the basis on which Glass Lewis will advise shareholders how to vote on resolutions proposed by FTSE listed companies during the 2025 AGM season.

As the Financial Reporting Conduct's UK Corporate Governance Code and the Association of Investment Companies' Code of Corporate Governance were both updated in 2024 and apply to financial years beginning on or after 1 January 2025, Glass Lewis will assess compliance by larger commercial companies and by investment companies based on the previous versions of these codes.

However, as the Quoted Companies Alliance's Corporate Governance Code was last updated in 2023, Glass Lewis will assess compliance by smaller companies with the 2023 version of the QCA Code.

Areas of enhanced focus in the 2025 benchmark policy guidelines include extensions of the chair's tenure, gender- and ethnically diverse director appointments, board oversight of artificial intelligence (AI) technology, executive pension contribution rates, hybrid incentive plans, multi-class share structures, and special-purpose acquisition companies (SPACs).

The updated guidelines also provide clarification on matters the proxy advisor will take into account when issuing recommendations for votes on executive scheme dilution limits, related party transactions, publication of proxy voting results, aspects of executive remuneration (including salary, bonus deferrals and restricted share plans), engagement with the remuneration committee, and virtual shareholder meetings.

[Read the Glass Lewis 2025 Benchmark Policy Voting Guidelines for the United Kingdom \(opens PDF\)](#)

## **ISS consults on 2025 benchmark voting policy**

Shareholder proxy advisor Institutional Shareholder Services (ISS) is consulting on changes to its benchmark policy for the 2025 season.

The benchmark policy sets out how the proxy advisor will apply its voting guidelines to individual jurisdictions. ISS produces specific annual voting guidelines for the United Kingdom and Ireland.

The consultation proposes five changes to the guidelines for the UK and Ireland.

- Updates to the policy to reflect the Investment Association's revised Principles of Remuneration. (See our [previous Corporate Law Update for more information on changes to the IA's Principles of Remuneration.](#))
- Updates to sections on remuneration to reflect the increased focus on pay resolutions in the revised Quoted Companies Alliance (QCA) Corporate Governance Code.
- Clarification around Financial Conduct Authority (FCA) reporting requirements in relation to board diversity (including gender and ethnic diversity).
- Updates to reflect the abolition for most financial institutions of the so-called "bankers' bonus cap".

ISS has asked for responses by 2 December 2024. It expects to announce the final changes to its voting guidelines in December 2024, to take effect from 1 February 2025.

[Access Institutional Shareholder Services' consultation on its benchmark policy for 2025 \(opens PDF\)](#)