

Regulatory Update August 2009

UK News

Myners calls for differential voting rights

The City minister has suggested that shareholders could be accorded different levels of voting rights depending on how long they have held shares in a company. <http://news.stv.tv/business/113167-myners-calls-for-more-radical-bank-reform>

The Takeover Panel has launched a new consultation on changes to the Code, relating to mandatory bids, management incentivisation arrangements, and documents that are required to be available for inspection in connection with an offer. <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/pcp200902.pdf>

2009 Review of the Combined Code On 28 July 2009 the FRC published a progress report on the current review of the Combined Code. The report identifies and invites views on the main issues to emerge from the first phase of the review. <http://www.frc.org.uk/corporate/reviewCombined.cfm>

Walker Review of Corporate Governance of UK Banking Industry Sir David Walker is leading an independent review of corporate governance in the UK banking industry. http://www.hm-treasury.gov.uk/walker_review_information.htm

Issuers will need to make changes to the way they run company meetings and communicate with shareholders online following the expiry of the deadline for implementation of the EU Shareholder Rights Directive on August 3.

The Directive broadly addresses the adoption of common standards in five issues: sufficient advance notice and prior information for meetings; the abolition of share-blocking; removal of legal obstacles to electronic participation; the right to ask questions; and voting by correspondence. <http://www.berr.gov.uk/files/file51502.pdf>

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US News

SEC scraps brokers' discretionary votes in corporate director elections. In a move hailed as a victory by activist investors, the Securities and Exchange Commission yesterday scrapped a controversial 72-year-old rule that allowed broker-dealers to vote in corporate director elections on behalf of their clients without specific instructions. The change, first proposed by the New York Stock Exchange three years ago, comes amid public anger over lax oversight of companies taking on excessive risk. <http://www.sec.gov/news/digest/2009/dig070109.htm>

The SEC has made permanent an interim final temporary rule, Rule 204T, that seeks to reduce the potential for abusive "naked" short selling in the securities market. The new rule, Rule 204, requires broker-dealers to promptly purchase or borrow securities to deliver on a short sale. The temporary rule, approved by the SEC in the fall of 2008, was set to expire on July 31. <http://www.sec.gov/news/press/2009/2009-172.htm>

2 US investor groups have teamed up to advise Congress and the world about what should be done to put financial regulation on the right footing. The CFA Institute Centre for Financial Market Integrity and the Council of Institutional Investors, have advocated a series of immediate fixes for the financial regulatory system and careful consideration of long-term solutions for systemic risk oversight and other fundamental steps to modernize financial regulation. http://www.cfainstitute.org/aboutus/press/release/09releases/20090715_01.html

The SEC is proposing a number of revisions to its rules that would improve the disclosure to shareholders regarding compensation and corporate governance, and facilitate communications relating to voting decisions. <http://www.sec.gov/rules/proposed/2009/33-9052.pdf>

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US News continued

The volume of United States initial public offerings continued to remain low in the first half of 2009, affected by the global loss of confidence in the capital markets. For the first six months of 2009, there were only 14 IPOs that raised \$2.3 billion. However, a quarter-over-quarter comparison saw an increase in IPO activity in the second quarter of 2009 for the first time since the fourth quarter of 2007. <http://www.pwc.com/US/en/press-releases/2009/second-quarter-IPO-market-records-first-increase-activity-since-2007.jhtml>

FASB announced the addition of a new FASB agenda project aimed at establishing an overarching framework intended to make financial statement disclosures more effective, coordinated, and less redundant. Some specific financial reporting areas the project will evaluate and address include whether the disclosure framework should:

- Apply to all entities or perhaps exclude private or nonprofit entities
- Apply to interim reporting
- Focus only on high-level principles
- Focus only on notes to financial statements or extend to ways to better integrate information provided in financial statements, MD&A, and other parts of a company's public reporting package.

http://www.fasb.org/cs/ContentServer?c=FASBContent_C&pagename=FASB%2FFASBContent_C%2FNewsPage&cid=1176156338441

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International News

Hong Kong considers greater disclosure of short sales

The Hong Kong Securities and Futures Commission has issued a consultation paper to explore whether it should require greater disclosure from traders about their short-selling activities. <http://www.sfc.hk/sfcConsultation/EN/sfcConsultFileServlet?name=incshpostrans&type=1&docno=1>

The argument for less competition in ratings agencies

A study of the impact of reputation management and competition in the credit rating industry . <http://hbswk.hbs.edu/item/6247.html>

The Technical Committee of the International Organization of Securities Commission has published a consultation paper - Principles for Periodic Disclosure by Listed Entities (Periodic Disclosure Principles) - that makes preliminary recommendations for disclosures that could be provided by issuers in periodic reports, particularly annual reports, of listed entities. <http://www.iosco.org/library/statements/pdf/statements-8.pdf>

The Australian regulator ASIC released consultation on guidance on disclosure of substantial holdings arising from securities lending or prime broking. It seeks to improve disclosure of substantial holdings in practice and makes it clear that securities lending transactions and prime broking arrangements need to be taken into account in calculating a substantial holding. <http://www.asic.gov.au/asic/asic.nsf/byheadline/09-117AD+Improving+disclosure+of+securities+lending?openDocument>

The International Corporate Governance Network used its annual meeting in July to back plans of the US Securities and Exchange Commission to make it easier for shareholders to nominate directors. <http://www.top1000funds.com/editorial/in-conversation/changing-the-world-one-vote-at-a-time.html>

The length of annual reports will continue to grow as new reporting regulations come into force in response to the credit crisis, according to a new Hong Kong-focused report by accountancy group Deloitte.

The average annual report increased in size from 89 pages to 95 pages over the last year as a number of more detailed financial reporting standards were adopted by Hong Kong and global regulators. http://www.deloitte.com/dtt/cda/doc/content/cn_CG_CGAlert6en_072409.pdf