

## Regulatory Update March 2010

### UK

FSA casts net worldwide in latest insider trading case. The UK Financial Services Authority has charged a former Dresdner Kleinwort banker and his wife with 13 counts of insider dealing, while a third suspect has been arrested on a small island in the Indian ocean, in a case which comes less than a week after the conviction of Malcolm Calvert.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/052.shtml>

Lindsay Tomlinson, chairman of the National Association of Pension Funds, said in a speech last month: "Overseas investors in aggregate already hold much more of the UK equity market than domestic institutions and the proportions held by domestic investors will continue to fall. These changes matter. Quite simply, in our current regulatory and accounting regime, there is no natural domestic buyer of UK equities. You can expect UK industry to be majority owned and controlled by foreign investors, for better or worse. As a citizen, I don't see this as an advantageous development."

[http://www.napf.co.uk/DocumentArchive/Press%20Releases/00\\_2010/20100225\\_25-02-2010%20-%20Lindsay%20Tomlinson%20Speech%20at%20NAPF%20Chairmans%20Dinner%202010.pdf](http://www.napf.co.uk/DocumentArchive/Press%20Releases/00_2010/20100225_25-02-2010%20-%20Lindsay%20Tomlinson%20Speech%20at%20NAPF%20Chairmans%20Dinner%202010.pdf)

History traces the CSR report from a page or two stuck in the middle of the annual report to a full-blown, standalone sustainability report. Now a new book says to put environmental, social and governance (ESG) information back in a single report and to interleave it with the financial narrative. *One report: Integrated reporting for a sustainable strategy* (Wiley, 2010) is co-authored by Grant Thornton partner Michael Krzus and Harvard Business School faculty member Robert Eccles.

<http://eu.wiley.com/WileyCDA/PressRelease/pressReleaseId-70777.html>

Two new initiatives designed to support the ownership role of pension funds and continue to support raising corporate governance standards in the UK will be launched today by the National Association of Pension Funds (NAPF).

New guidance<sup>1</sup>, "Pension Funds and the ISC Code – A practical guide" sets out how the Code's Principles, covering shareholder engagement and reporting, can be applied in practice. It encourages pension funds to incorporate effective engagement monitoring into their fund manager reviews helping to build a stronger corporate governance culture.

[http://www.napf.co.uk/DocumentArchive/Press%20Releases/00\\_2010/20100209\\_09-02-2010\\_Putting%20a%20Stronger%20Corporate%20Governance%20Culture%20into%20Practice.pdf](http://www.napf.co.uk/DocumentArchive/Press%20Releases/00_2010/20100209_09-02-2010_Putting%20a%20Stronger%20Corporate%20Governance%20Culture%20into%20Practice.pdf)

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The Institute of Chartered Secretaries and Administrators (ICSA), has today launched '*Improving board effectiveness*', a consultation document on its update of the Higgs Guidance.

<http://www.icsa.org.uk/assets/files/pdfs/consultations/ICSA%20Review%20of%20the%20Higgs%20Guidance%20-%20first%20consultation.pdf>

The FSA has published its *Listing Regime Review – Feedback on CP09/24 and CP09/28 with final rules*. The new rules come into effect from 6 April 2010. They will require overseas Premium Listed issuers to offer pre-emption rights unless they have received shareholder approval to disapply such rights. Overseas Premium Listed companies will not have to offer pre-emption rights to shareholders until 6 April 2011.

[http://www.fsa.gov.uk/pubs/policy/ps10\\_02\\_newsletter.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_02_newsletter.pdf)

The Takeover Panel is considering a number of amendments with a view to improving the coherence and consistency of the approach in the Code towards the requirements for certain financial information, when published in the form of a profit forecast, an asset valuation, a merger benefits statement or any other quantified statement of effects, either before or during the course of an offer, to be accompanied by a report from one or more third parties. <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201001.pdf>

Paul Myners views on governance and engagement: there have been significant shortcomings in the past and these have cost investors and savers dearly.

[http://www.hm-treasury.gov.uk/press\\_14\\_10.htm](http://www.hm-treasury.gov.uk/press_14_10.htm)

GC100 - the Association for the General Counsel and Company Secretaries of FTSE100 companies - has published its submission to the Financial Reporting Council with regard to the proposed changes to the Combined Code on Corporate Governance.

<http://www.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1247271214166&ssbinary=true>

Companies may be required to report on their progress to get more women into the boardroom, under proposals announced by the Government Equalities Office.

[http://www.equalities.gov.uk/media/press\\_releases/women\\_on\\_boards\\_public\\_want\\_q.aspx](http://www.equalities.gov.uk/media/press_releases/women_on_boards_public_want_q.aspx)

Review of FTSE 350 governance disclosures by Grant Thornton. <http://www.grant-thornton.co.uk/pdf/Corporate%20Governance%20Review%202009.pdf>

## Europe

CESR recommends the introduction of a pan-European disclosure regime for net short positions in shares. [http://www.cesr-eu.org/index.php?page=home\\_details&id=465](http://www.cesr-eu.org/index.php?page=home_details&id=465)  
 The European Commission is in the early stages of drafting a proposal on making derivatives trading - which includes CDS trading - more transparent and pushing all Over The Counter (OTC) derivatives through central clearing houses first.  
 Exchange giant NYSE Euronext has become the first stock market to make plans to put price data from different trading venues on a single platform, a key demand from traders who fear they are losing out from the fragmentation of the market in recent years.

## US

The Securities and Exchange Commission today announced a series of steps to educate investors about proxy voting and support greater investor participation in corporate elections. <http://www.sec.gov/news/press/2010/2010-23.htm>

The Securities and Exchange Commission finalized a new set of proxy disclosure rules, including requirements related to “risky” compensation, director qualifications, compensation consultant fees and services, and more information about the board’s leadership structure, oversight of risk management, and consideration of diversity in the director nominating process. What will the corporate governance risk firm RiskMetrics be looking for in the new disclosure requirement on risks raised by compensation programs? In particular, how will RMG react to non-disclosure? FAQ’s.  
[http://www.riskmetrics.com/policy/2010\\_NewUSDisclosureFAQ](http://www.riskmetrics.com/policy/2010_NewUSDisclosureFAQ)

NYSE Regulation has reminded New York Stock Exchange-listed foreign private issuers of their obligations regarding notifications to and filings with the Exchange.  
[http://www.nyse.com/pdfs/FINAL\\_2010%20Annual%20FPI%20letter\\_2\\_19\\_10.pdf](http://www.nyse.com/pdfs/FINAL_2010%20Annual%20FPI%20letter_2_19_10.pdf)  
 The Securities and Exchange Commission (“SEC”) issued a statement reaffirming its support for a single set of globally accepted accounting standards, yet refrained from establishing a firm timeline for incorporating such standards into the U.S. financial reporting system. An analysis by Gibson Dunn and Crutcher.  
<http://www.gibsondunn.com/Publications/Pages/SECStatementGlobalAccountingStandards.aspx>

A recent KPMG poll of more than 2,000 executives found that many companies continue to move forward with plans to implement International Financial Reporting Standards, despite the SEC’s lack of a definite timeline. <http://www.kpmginstitutes.com/ifrs-institute/insights/active/half-of-execs-want-to-use-ifrs-early.aspx>

Proxy Advisory Services: The Need for More Regulatory Oversight and Transparency, a discussion paper from NIRI and the Society of Corporate Secretaries.  
<http://www.niri.org/Main-Menu-Category/advocate/Regulatory-Positions/Proxy-Advisory-Services.aspx>

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The Securities and Exchange Commission adopted a new rule to place certain restrictions on short selling when a stock is experiencing significant downward price pressure. The measure is intended to promote market stability and preserve investor confidence. <http://www.sec.gov/news/press/2010/2010-26.htm>

### **International**

A Race Toward Sustainability – and Profits: New Report Delivers Powerful Message and Roadmap for Companies

Sustainability <http://www.ceres.org/Page.aspx?pid=1227>

The International Organization of Securities Commission (IOSCO) has published a final report – Principles for Periodic Disclosure by Listed Entities – that includes a set of recommendations for disclosures that could be provided in the periodic reports, particularly annual reports, of listed entities whose securities are listed or admitted to trading on a regulated market in which retail investors participate.

<http://www.iosco.org/library/statements/pdf/statements-13.pdf>

ASIC has delayed the introduction of new short selling rules in Australia.

<http://www.asic.gov.au/ASIC/asic.nsf/byHeadline/10-42AD%20Short%20position%20reporting?opendocument>

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