

REGULATORY UPDATE – February 2007

The EU's shareholder rights directive is due to have its first reading in the European Parliament on 13 March. The directive is intended to address barriers to the exercise of cross-border voting rights in Europe, and covers such areas as share blocking, the right to appoint a representative and electronic voting. If passed without amendments it will become a directive. However, if amendments are made they will have to be agreed with member state governments.

http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm

Despite growing financial losses in various business sectors from climate change, over half of the nation's 500 largest publicly traded companies are doing a poor job of disclosing climate change risks to their investors, according to a first-ever report analyzing climate disclosure practices among S&P 500 companies last year.

The Ceres/Calvert report released today concludes that America's largest companies still aren't taking climate change seriously enough. Less than half (47 percent) of the S&P 500 companies responded to a global survey last year by the Carbon Disclosure Project requesting information about their climate risks and strategies, and those that did respond failed to provide much of the information investors are seeking. Nearly a third (30 percent) of the responders, in fact, declined to publicly release their responses, calling them "confidential."

http://www.calvert.com/news_newsArticle.html?article=10667&image=cn.gif&keepleftnav=news

New York will lose its status as the world's financial capital within a decade without action to change U.S. market rules, a report backed by U.S. Senator Charles Schumer and New York Mayor Michael Bloomberg warned. The report, which was prepared by McKinsey & Co. after surveying hundreds of executives, suggests creating an "international financial services zone" in New York, where tax breaks and other incentives could be used to lure foreign companies, and a federal commission on financial competitiveness. Other specific recommendations include clearer guidance on implementing the Sarbanes Oxley corporate governance reforms and to "exempt foreign companies that comply with the corporate governance standards of SEC-approved foreign regulators from also having to comply with the requirements of Sarbanes-Oxley." The report also urges the SEC to consider recognising International Financial Reporting Standards without requiring foreign companies listing in the United States to reconcile to the U.S. Generally Accepted Accounting Principles, http://www.senate.gov/~schumer/SchumerWebsite/pressroom/special_reports/2007/NY_REPORT%20FINAL.pdf

Implementation of MiFID will create an entirely new regulatory regime for electronic publishers. In its final policy statement and regulatory text on implementing MiFID,

the new EU rules for share trading, the UK's Financial Services Authority proposes creating -- for the first time in any country outside China -- a regulatory regime for electronic publishers, referred to by the FSA as "Trade Data Monitors" (TDMs), that collect and publish post-trade prices from investment firms.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/013.shtml>

The SEC proposed to add mutual fund risk-return data to its project to increase use of the computer-readable XBRL format. "Today's proposal is about making the promise of interactive data available to mutual fund investors," SEC Chairman Christopher Cox told an open meeting of the investor protection agency. The SEC proposal would allow mutual funds to volunteer to provide risk-return information in XBRL format, which tags numeric or textual data with code so the data can be analysed more easily and uniformly. <http://www.sec.gov/news/press/2007/2007-12.htm>

The Prospectus Regulation that came into law in July 2005 unfortunately left certain questions unanswered, notably with respect to the presentation of historical financial information, resulting in the necessity of amending the law a mere 18 months later.

The amendment coming into effect now sets out the circumstances that mean an issuer must consider including additional historical information. It sets out that companies will have to consider including additional historical financial information if they have a 'complex financial history' or if they have made a 'significant financial commitment'. Companies that have made or intend to make an acquisition would be treated as having a 'significant financial commitment' if the acquisition would result in a change of more than 25% of the size of the business.

The key message for companies is that the Prospectus Directive should be on their radar sooner rather than later. Given the different financial reporting standards that exist for private and public companies, the differing listing protocols between London's main Official List and the alternative investment market (AIM) not to mention the impact of International Financial Reporting Standards (IFRS), the job of finding, comparing and potentially restating the financial history of a company and its related entities could well be a considerable one, to say the least.

http://ec.europa.eu/internal_market/securities/docs/prospectus/draftreg_809-2004_en.pdf

The European Commission has launched a public consultation on whether there is a need to reform rules on auditors' liability in the EU and on the possible ways forward. This follows an independent study on the economic impact of current auditors' liability regimes and on insurance conditions in Member States (IP/06/1307). The Commission presents four possible options for reforming auditors' liability regimes in the EU and invites stakeholders to give their views on the issues involved by 15 March 2007 http://ec.europa.eu/internal_market/auditing/liability/index_en.htm