

Regulatory Update – October 2008

Europe

Mutual fund groups are more likely to support shareholders in their quest to rein in executive compensation in 2008 compared with 2004. Analysis of mutual fund voting over the last five years shows a marked increase in the number of abstentions on CSR resolutions, according to research by http://www.fundvotes.com/downloads/Mutual_Fund_Proxy_Voting_2004-2008_oct.pdf

Fund managers have delivered a stinging verdict on the accuracy of analyst forecasts amid a rocky Q3 reporting season. **Respondents to Merrill Lynch's monthly survey of asset managers put little faith in earnings estimates for the next year, with 92 percent regarding forecasts as 'too high'** and more than half saying they are 'far too high'. [survey](#)

FSA: Public statement on the 30 day review of short selling measures. The Financial Services Authority (FSA) has concluded that it will retain its short selling measures taken on 18 September 2008 following turbulence in banking stocks; except for one change in that it will no longer be necessary to require daily disclosures of short positions if there has been no change in short positions. A comprehensive review of short selling will be published in January. www.fsa.gov.uk/pages/Library/Communication/PR/2008/122.shtml.

Adair Turner, the new chairman of the FSA discussed his baptism of fire given the tumultuous events of the last few weeks. In this interesting speech he outlines how and why problems have arisen, and how to resolve them. www.fsa.gov.uk/pages/Library/Communication/Speeches/2008/1013_at.shtml.

EU leaders have called for the overhaul of the international financial system. The European Commission writes the consensus is that "the reform must be 'all-encompassing' and should include more international supervision, a global 'early warning' system for crisis and worldwide regulatory standards to ensure transparency and accountability". It also reports that the 15 Eurozone countries will be setting up a 'taskforce' to improve economic conditions amongst participant nations in an attempt at concerted action. http://ec.europa.eu/news/economy/081016_1_en.htm.

Fair value

The debate continues.

- A report of the Thomas Jones, vice chairman of the International Accounting Standards Board.
<http://www.cfo.com/article.cfm/12498804?f=EditorsLetter103008>
- Notes from the Corporate Reporting Users Forum.
http://www.cruf.co.uk/IAS39_carve_out.pdf
- The SEC is undertaking a study, and holding a public forum.
<http://www.sec.gov/spotlight/fairvalue.htm>
- IASB, FASB, the accounting standard-setters in the US and abroad are working on a revision of how companies should present their financial statements.
<http://www.iasb.org/News/Press+Releases/IASB+and+FASB+launch+consultation+on+proposed+enhancements+to+the+presentation+of+financial+statements.htm>
- Fair Value Supporters the CFA Institute Centre for Financial Market Integrity, the Center for Audit Quality, the Consumer Federation of America, and the Council of Institutional Investors Urge SEC not to suspend mark-to-market accounting rule.
http://www.cfainstitute.org/aboutus/press/release/08releases/20081015_02.html

Mr Paul Boyle, FRC Chief Executive believes the standards set out in the Combined Code on Corporate Governance, for which the FRC is responsible, remain comprehensive and appropriately principles-based.

He said “The Code states that the role of a company’s board is ‘to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed.’ We expect that directors of banks and other financial institutions are already reviewing their governance and risk management practices. We, therefore, currently believe that the recent difficulties in the financial sector do not require a generalised tightening of governance standards across the UK corporate sector. The focus should be on whether the existing standards have been observed in practice.”
<http://www.frc.org.uk/press/pub1750.html>

Financial Services Authority has **provided detail on the feedback** it received in consultations into a new set of policy options for treating the disclosure of interests in companies held through derivative contracts.
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/123.shtml>

A joint report from the European System of Central Banks and the Committee of European Securities Regulators makes **recommendations concerning central securities depositories** (CSDs) and central counterparties (CCPs), which aim to increase the safety, soundness and efficiency of securities clearing and settlement systems and CCPs, respectively. http://www.cesr-eu.org/index.php?page=home_details&id=338

France moves towards better transparency of derivatives.

France is moving towards a regime requiring disclosure of economic interest in listed companies held through derivatives, in a report from a panel headed by Bernard Field, a member of the board of the Autorité des Marchés Financiers. (in French only)

http://www.amf-france.org/documents/general/8479_1.pdf

Hermes Equity Ownership Services has launched a **south-east Asian fund to promote good corporate governance** in the first such regional fund globally.

http://www.hermes.co.uk/pdf/news_2008/081023_ASEAN_Corporate_Governance_Fund_FINAL.pdf

FSA Published Feedback on Unauthorized Trading and Market Abuse Controls

On October 30, the UK Financial Services Authority (FSA) published its latest Market Watch newsletter. The newsletter provides an update on market conduct and transaction reporting issues such as unauthorized trading, market abuse controls, technical reporting specifications for reporting derivatives and transaction reporting.

Particularly, the newsletter highlights the FSA's findings from its continuing work with respect to systems and controls necessary to deter and detect unauthorized trading. Specifically, the FSA has been interested in such things as front office culture and governance, trading mandates and limits, risk management and limits, use of management information, use of off-market rates, attribution of profit and losses, confirmations, margining, collateralization and cash management and the segregation of duties and IT security.

Market Watch 29 also includes feedback from the FSA's follow-up visits to hedge fund managers on market abuse controls. The feedback addresses firm culture and senior management responsibility, compliance, the control of inside information, monitoring of trading activity, training, personal account dealing and use of telephone taping.

www.fsa.gov.uk/pubs/newsletters/mw_newsletter29.pdf

CESR publishes the summary of **responses to its questionnaire** to CESR Members on the implementation of the Transparency Directive

<http://www.cesr.eu/popup2.php?id=5339>

Owing to a lack of a firm framework of analysis in the field, the CFA Institute Centre for Financial Market Integrity launched *Environmental, Social, and Governance Factors at Listed Companies: A Manual for Investors* in the EMEA region.

http://www.cfainstitute.org/aboutus/press/release/08releases/20081027_01.html

US News

SEC: 'Naked' short selling antifraud rule. The SEC has issued a directive against abusive 'naked' short selling whereby short sellers sell short without having stock available for delivery and intentionally fail to deliver stock within the standard US three day settlement cycle. www.sec.gov/rules/final/2008/34-58774.pdf.

John White, Director of the Division of Corporation Finance of the Securities and Exchange Commission, speaking at a proxy disclosure conference on October 21, stated that SEC reporting companies, **in drafting their Compensation Discussion and Analysis (CD&A) sections of next year's proxy statements, should take close note of the new executive compensation provisions** in the Emergency Economic Stabilization Act which created the Troubled Asset Relief Program (TARP). TARP provides for substantive and procedural requirements with respect to the compensation of the senior executive officers
www.sec.gov/news/speech/2008/spch102108jww.htm

Senior management of public companies generally view the practice of short selling of stock to be harmful during periods of market volatility and favour the implementation of new rules and disclosure requirements that protect the interests of issuers and shareholders, according to a new study on short selling conducted by Opinion Research Corporation on behalf of NYSE Euronext. The survey among corporate issuers in America and abroad follows the Oct. 8, 2008 expiration of the SEC's emergency order that banned short selling in hundreds of financial companies. A total of 438 chief executive officers, chief financial officers, and investor relations officials of public companies listed on NYSE Euronext exchanges and Nasdaq responded to the survey, which was conducted during the week of Oct. 14, 2008.
<http://www.nyse.com/about/newsevents/1224497728395.html>

FINRA Amends Reporting Requirements for OTC Transactions in Foreign Securities

The Securities and Exchange Commission has approved a proposal by FINRA to require all over-the-counter (OTC) transactions in foreign securities to be reported to the OTC Reporting facility within 90 seconds of execution. Prior to the amendments approved by the SEC, foreign securities other than ADRs and Canadian issues were excluded and were required to be reported by 1:30 p.m. Eastern Time the day after the transaction was executed. Beginning October 27, OTC transactions in foreign securities will be subject to the same reporting requirements.
www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117109.pdf.

The Public Company Accounting Oversight Board voted today to propose for public comment **a suite of seven new auditing standards related to the auditor's assessment of and responses to risk** and related conforming amendments.
http://www.pcaob.org/News_and_Events/News/2008/10-21.aspx