Corporate briefing

2017 AGM and reporting season: what to expect

31 January 2017

Contents

This briefing summarises developments for companies to consider when preparing for their 2017 annual general meetings (AGMs) and compiling the narrative aspects of their annual reports and accounts. It is aimed principally at premium listed companies. It may also be useful for AIM companies who choose voluntarily to comply with the Corporate Governance Code and/or any other aspects of legal or regulatory requirements applying to listed companies.

On the AGM front, developments include the publication of template pre-emption disapplication resolutions and the holding of the first wholly electronic AGM. 2017 will see many companies put their remuneration policy resolution to shareholders for the second time. Numerous recent threats of action on executive pay, along with the issue of the Government Green Paper on corporate governance, a key aspect of which is executive remuneration (see our December 2016 client briefing), mean remuneration is likely to remain the dominant issue in 2017. On the narrative reporting front, developments include EU audit reform implementation and publications from the Financial Reporting Council and others.

We also look at 2018 and beyond for those who want or need to prepare for future developments, or be early adopters. In particular, we consider the new non-financial reporting statement to be included in strategic reports from 2018 which may necessitate preparation in advance for some companies.

The briefing ends with an appendix of key 2016 publications and links which may be useful to companies both for the 2017 AGM and reporting season and also more generally.

2017 AGM ISSUES

2017 AGM ISSUES

- Template pre-emption disapplication resolutions
- Remuneration policy resolution
- MAR and the buyback resolution
- Changes to articles of association
- Appointment of auditors
- No more FRS 101/102 shareholder notifications in AGM notices
- Shareholder requisitioned resolutions
- Independent shareholders defeat vote
- First fully electronic AGM

Template pre-emption disapplication resolutions

Companies typically disapply statutory pre-emption rights for new issues of up to five or 10 per cent of their existing issued share capital. As we reported in our July 2016 Quoted Company Newsletter, in May 2016 the Pre-Emption Group published two template resolutions for the disapplication of pre-emption rights, alongside a 2016 monitoring report on the implementation of its March 2015 Statement of Principle for the disapplication of pre-emption rights. The monitoring report shows that, in general, the Statement of Principles is adhered to.

However, having considered the monitoring exercise and investor representatives' views, the Pre-Emption Group decided to publish two template resolutions to assist companies. It recommends that companies use them when putting forward resolutions to disapply pre-emption rights in accordance with the Statement of Principles. Moreover, if any company, when seeking the extra five per cent, fails to use the template resolutions, including if the company does not have two separate five per cent resolutions but has just one resolution for 10 per cent, the Institutional Voting Information Service (IVIS) (the corporate governance research service of the Investment Association) will, as from 1 January 2017, "red top" the company in question. This means that in IVIS's report on the company to its members, it will indicate that it has a strong concern about the disapplication resolution. In practice this could mean that the resolution (requiring a 75 per cent majority to pass) may well be lost if shareholders decide to vote against based on this.

TEMPLATE PRE-EMPTION DISAPPLICATION RESOLUTIONS

- **The first resolution.** This requests a five per cent disapplication to be used on the usual unrestricted basis.
- **The second resolution.** This should only be put forward when appropriate to do so. It requests a further five per cent disapplication which it specifies (within the resolution itself and not its explanatory notes as was the case previously) is to be used only for an acquisition or specified capital investment in accordance with the Statement of Principles.

Where the further five per cent disapplication authority is actually used, companies should, in the announcement of the issue, disclose the circumstances that have led to its use and the consultation process undertaken (in addition to disclosures in the next annual report).

Remuneration policy resolution

For many companies, having put their remuneration policy to a binding vote of shareholders for the first time in 2014, 2017 will see their second remuneration policy resolution put to shareholders. AGM notices for such companies will therefore need to include this resolution and relevant explanatory notes.

2016 saw two FTSE 100 companies fail to achieve the necessary support from shareholders on their advisory remuneration votes (on the directors' remuneration report minus policy) and, as the crescendo of voices with concerns on executive pay mounts, executive remuneration is likely to be a, if not the, major focus of the 2017 season. Some updated guidelines and statements on executive remuneration feature opposite.

Some remuneration guidelines

- **Investment Association (IA) 2017 Principles of Remuneration**, together with an open letter to remuneration committee chairs setting out particular issues for the 2017 AGM. See our November 2016 briefing for more.
- **IA Working Group final report on executive pay**. See our September 2016 Quoted Company Newsletter for more.
- **Revised 2016 GC100 and Investor Group remuneration reporting guidance**. See our September 2016 Quoted Company Newsletter for more.
- **Pensions and Lifetime Savings Association Corporate Governance Policy and Voting Guidelines 2017**. In its revised voting guidelines for 2017, the PLSA focuses on quantum, with its press release noting "provocative" levels of executive pay. New guidelines provide that a vote against the pay policy may be justified where it is likely to result in pay awards that could bring the company into public disrepute or foster internal resentment; if there are pensions payments worth over 50 per cent of annual salary; and where annual bonus performance targets are not disclosed. There is also a recommendation that if shareholders vote against pay policy, they should also oppose the re-election of the remuneration committee chair or a director
- **Other**. Blackrock and Legal & General Investment Management are reported to have written to the FTSE 350 and their investee companies respectively, signalling a tougher stance on executive pay. For example, Blackrock, in its 2017 approach to executive remuneration, asks that companies: give a strong rationale for any significant pay increase that is out of line with that for the rest of the workforce; and apply any downgrade of the workforce's pension to executives. LGIM, in its October 2016 article - Mind the gap! - asks that companies: publish the pay ratio between the CEO and the median employee; and reduce the disparity in executive and employee pension contributions.

MAR and the buyback resolution

The EU Market Abuse Regulation (2014/596/EU) (MAR) has repealed the EU Buyback and Stabilisation Regulation 2003. This, including its safe harbours, has been replaced by Commission Delegated Regulation 2016/1052 on regulatory technical standards for buy-back programmes and stabilisation measures. As we mentioned in the 2016 season briefing, any references to the 2003 Regulation in AGM notices should be removed, although leaving in the description of the maximum price, which remains materially unchanged. There remains a great variety in the exact wording of the maximum price formulation for buyback resolutions, but all need to satisfy LR 12.4.1, whether in more or less detail.

Changes to the articles of association

As with 2015, relatively few companies amended their articles of association in 2016. The most common change was to increase the cap on non-executive director fees. Changes to borrowing powers and flexibility on how to pay dividends also feature. (For more on changes to articles as regards dividend payment flexibility, see our 2016 AGM season briefing.)

A particular area for companies to consider concerns new accounting rules in IFRS 16, requiring operating leases to be included as assets and liabilities on balance sheets. These rules are required to be adopted by companies for accounting periods beginning on or after 1 January 2019. As part of their conversations with their auditors about the effects of IFRS 16, companies should consider whether IFRS 16 may require (if operating leases are material for a company) (a) amendment of its borrowing limits in its articles of association, perhaps to adjust the "adjusted capital and reserves" definition; and (b) amendment of performance targets in share incentive schemes (because IFRS 16 will substitute depreciation and interest for rental payments).

Appointment of auditors

Companies should continue to consider whether in compliance with either the Competition and Markets Authority Statutory Audit Services for Large Companies Order 2014 and/or the EU audit reforms (see narrative reporting section for more), they need to tender the audit contract before the next AGM and then ask shareholders to resolve to reappoint existing auditors or appoint new ones. In addition, whether or not a new auditor is to be voted on, due to changes to the Companies Act 2006 as a result of the EU audit reforms, when directors propose any auditor for appointment they should state that this follows the recommendation of the audit committee. Such wording could be added to the explanatory notes to the resolution.

No more FRS 101/102 shareholder notifications

In December 2016, the Financial Reporting Council published amendments to FRS 101 (Reduced Disclosure Framework) and FRS 102 (The Financial Reporting Standard applicable in the UK and Republic of Ireland). The amendments remove the requirement for a company to notify its shareholders that it intends to take advantage of the disclosure exemptions in FRS 101 and FRS 102 (the notification).The notification, which, for parent companies not using IFRS, had often in the last few years been included either in the AGM notice or in a separate communication, had caused much confusion, for example as to whether the notification was required annually. The removal of the notification requirement, for accounting periods beginning on or after 1 January 2016, means that AGM notices for the forthcoming season need no longer contain this wording.

Shareholder requisitioned resolutions

In 2016, we are aware of six requisitioned AGM resolutions from shareholders, of which three failed. Shareholder requisitioned resolutions, supported by the boards, were successful at Glencore, Rio Tinto and Anglo American. All three resolutions were championed by the "Aiming for A" investor coalition that describes itself as supporting companies for their low-carbon transformation and tables what is terms "strategic resilience for 2035 and beyond" resolutions. Aiming for A says that it is currently engaging with the ten largest extractives and utilities companies.

Independent shareholders defeat vote

In our [2015 AGM season briefing] we wrote about the then new provisions of the Listing Rules for listed companies with controlling shareholders (holding 30 per cent or more of votes) where they elect/re-elect independent directors. For such companies, the election or re-election of independent directors must be approved not only by a majority of all shareholders as usual, but also by a majority of independent shareholders only (ie excluding the controlling shareholder(s) and anyone acting in concert with it/them).

Where the necessary approval of independent shareholders is not obtained, if the company wishes to proceed with the election/re-election of the director in question, there may be a second vote (after 90 days but within 120 days), this time just by all shareholders in the usual way, with no need for separate approval by independent shareholders. In effect, this provides a cooling off period in which the company may or may not chose to engage with the disaffected shareholders and may or may not change its mind about proposing the director in question.

Sports Direct International plc, which has a controlling shareholder within the definition of the Listing Rules, is the first company we are aware of that did not secure the necessary majority of votes of its independent shareholders, in its case for the re-election of its independent chairman at its 2016 AGM. In response and as permitted by the Listing Rules, on 5 January 2017 Sports Direct issued a notice for a general meeting to vote again on the re-election of the chairman. The circular convening the meeting noted steps that the company had taken and was taking and also that the chairman had stated that if he was re-elected at the meeting but did not then gain the support of independent shareholders at the AGM later in 2017, at that point he would step down with immediate effect. The resolution at the general meeting was passed by a majority of all shareholders (including the votes of the controlling shareholder) and so the chairman was re-appointed.

First fully electronic AGM

2016 saw the first fully electronic AGM by Jimmy Choo plc, assisted by its registrar Equiniti. There was no physical meeting and "attendance" was remote with voting dealt with electronically and questions by phone. A hard copy AGM notice, proxy form and attendance card were sent to shareholders, with the notice containing additional instructions on the electronic nature of the meeting including how to "attend", to view the slides and presentation, to vote and to ask questions. Broadly, access to the meeting entailed downloading a mobile and web-based application (the AGM App), accessible from various electronic devices including mobiles, tablets and PCs. Then, just before the meeting started, shareholders wishing to "attend" entered the generic meeting code followed by their unique user name and password enabling their details to be validated by the registrars. Voting was by poll on a resolution by resolution basis (although block voting can be achieved, we understand), with shareholders casting their vote by selecting the for, against or withheld option on their screen. Once shareholders had voted, they would see an on-screen message that their vote had been received.

A number of points are worth making for any company who considers it may have goals that can be served by conducting an electronic AGM (whether fully electronic or as an add-on to a physical meeting – see more below).

POINTS TO NOTE – ELECTRONIC AGMs

- Articles of association will need to be reviewed, and likely amended, before holding an AGM in this way, ie at the AGM before the one that the company wants to hold wholly or partly electronically.
- The planning process should be started early with extra time allowed for preparation, testing and rehearsals and with the involvement of advisers including in particular the company's registrars.
- Careful consideration should be given to whether the all–electronic version used by Jimmy Choo plc is appropriate, or whether a hybrid version with a physical meeting and electronic add-on is preferred.

Although different considerations will apply for different companies, relevant factors on the question of whether to have an all-electronic AGM only or a hybrid, might include:

- **Size and nature of the shareholder base**. For example, are there some shareholders who commonly turn up to the physical AGM and would want to continue to do so?
- **Frequency of questions**. For example, are there commonly a lot of questions and or comments that might be somewhat difficult to manage in a wholly-electronic/telephone-based environment?
- **Costs**. For example, is the company looking to make cost and time savings that only a fully electronic AGM might allow (for example, not hiring a room, not flying the board in etc..) or is it prepared to shoulder the additional costs that having a physical meeting plus an electronic add-on is likely to entail? It is thought that most companies would not be comfortable with doing away with the physical meeting, thereby negating most of the cost and time savings.
- **How such a move may be perceived**. For example, could a wholly electronic AGM, especially by a long-established company, be perceived as the board not wanting to engage with shareholders and making itself remote, whereas an electronic meeting as an add-on can be viewed more positively as furthering engagement?

2017 NARRATIVE REPORTING ISSUES

2017 NARRATIVE REPORTING ISSUES

- EU audit reform implementation
- Financial Reporting Council publications
- Investment Association publications
- Updated UK and US institutional guidance
- Miscellaneous new and updated reporting requirements

EU audit reform implementation

Background. Although the EU audit reforms seem to have been a long time coming and although companies will turn to their auditors for detailed advice in this area, it is perhaps useful to summarise here the changes that have taken place in 2016 to effect the widely-anticipated EU audit reforms.

In our 2016 AGM season briefing, we covered, as a development for 2017, the EU Audit Regulation (EU/537/2014) and the EU Audit Directive (2014/56/EU) (together the EU audit reforms), to be implemented in Member States by 17 June 2016. The changes resulting from the EU audit reforms that are of most relevance to AGMs and narrative reporting for the Public Interest Entities to which the Regulation in particular applies (broadly, all listed companies and also credit institutions and insurance undertakings, even if the latter are not listed), concern the regular mandatory rotation of auditors and re-tendering of the audit contract, specifically requiring rotation at least every 20 years with re-tendering at least every 10 years. As a result, companies will have to conduct more regular audit tenders and more regularly vote at their AGMs on a new set of auditors. Other relevant reforms are those relating to audit committees, which make adjustments to existing rules as regards audit committee composition and functions, elements of which then have to be reported on.

We note below the key legal and regulatory changes that effect the EU audit reforms, effective for accounting periods starting on or after 17 June 2016. Although the effective dates mean most companies need not report on these changes until their 2017 annual reports and accounts published in 2018, those who may need to effect changes to ensure compliance will want to consider this sooner rather than later, if they have not already.

Changes to the Companies Act 2006. As we noted in our July 2016 Quoted Company Newsletter, The Statutory Auditors and Third Country Auditors Regulations 2016 (2016 No. 649) have amended the Companies Act 2006 (in particular Parts 16 (audit) and 42 (statutory auditors)). The changes here implement the key EU reform noted above on mandatory rotation of auditors and re-tendering of the audit contract and related matters.

2016 Corporate Governance Code and Guidance for Audit Committees. New versions of the UK Corporate Governance Code (2016 Code) and Guidance on Audit Committees (2016 guidance) were published by the Financial Reporting Council (FRC) and are applicable for accounting periods beginning on or after 17 June 2016. Changes to the 2016 Code relate to audit committees and are minor:

- C.3.1: addition such that the audit committee as a whole shall have competence relevant to the sector in which the company operates.
- C.3.7: removal of the provision that FTSE 350 companies should put their audit contract out to tender at least every ten years, as duplicative.
- C.3.8: addition such that advance notice of any retendering plans should be included in the audit committee report in annual reports.

Changes to the 2016 guidance are numerous, including updates for the 2016 Code, the EU audit reforms, the new ethical and auditing standards for auditors, the Competition and Markets Authority 2014 Statutory Audit Services for Large Companies Order and as regards a company's interactions with the FRC's Audit Quality Review Team and Corporate Reporting Review Team.

Changes to DTR 7.1 – audit committees. Also effective on 17 June 2016 are a variety of changes to DTR 7.1 on audit committees to effect the EU audit reforms. Changes relate to, among other things, composition of the committee (for example that a majority of members be independent; that members of the committee as a whole are to have competence relevant to the sector in which the issuer is operating; and that the chairman must be independent and appointed by the board); and also to the committee's functions (for example that it should be responsible for the procedure for selection of the company's auditors and make recommendations to the board; that it should monitor non-audit services; and that it should inform the board of the outcome of the audit and explain various related matters).

The Financial Conduct Authority continues to helpfully state (in DTR 7.1.7) that compliance with certain provisions of the 2016 Code (namely A.1.2; C.3.1; C.3.2; C.3.3; and C.3.8) will, in its view, result in compliance with the audit committee DTRs. Therefore for those premium listed companies, and others, who already comply with the 2016 Code, the changes to the DTRs should not entail much if any change. However, for affected companies who do not already comply (for example, listed companies that explain their non-compliance with any of the relevant Code provisions), they will need to consider DTR 7.1 as amended and ensure they comply with it since the DTRs are mandatory (and not comply or explain).

Changes to PRA rules – audit committees. The Prudential Regulation Authority has also amended its rules (subject to transitional arrangements) to apply the EU audit reforms on audit committees to, amongst others, credit institutions and insurance undertakings. As already noted, the EU audit reforms, and so the PRA rules applying them, apply to credit institutions and insurance undertakings regardless of whether they are listed or not.

Financial Reporting Council publications

Brexit – reminders for financial reports. Following the referendum result to leave the EU, the FRC issued, in July 2016, reminders for directors to consider the issue when preparing their financial reports. Whilst acknowledging that not all businesses would be equally affected, the FRC reminded directors that they should decide what level of disclosure would be needed to meet the needs of investors and regulatory requirements and instigate early dialogue with their auditors. Matters noted on narrative reporting include the following.

BREXIT – SOME FRC REMINDERS

- **Business model**. This should include a description of the main markets the company operates in and its value chain, and enable readers to make an assessment of the company's exposure arising from the vote result.
- **Principal risks and uncertainties**. Directors should consider the nature and extent of any risks and uncertainties from the vote result to the future performance and position of the business and, if judged to be "principal", should disclose and explain them. Company-specific (ie non boilerplate) disclosures are the most useful to investors, for example the impact of trade agreements for companies with a high level of exports to the EU.
- **Viability statement**. Boards should consider whether the referendum vote gives rise to solvency, liquidity or other risks that may threaten the long-term viability of the business and implications for the viability statement.

Annual report on developments in corporate governance and stewardship. In January 2017, the FRC published its annual report looking at corporate governance and stewardship in 2016. It has four main purposes: to give an assessment of corporate governance and stewardship; to report on the quality of compliance with, and reporting against, the Code (and the Stewardship Code, although this briefing does not cover the Stewardship Code); to assess the quality of engagement between companies and shareholders; and to indicate where the FRC would like to see changes in governance behaviour or reporting.

FRC 2016 GOVERNANCE REPORT – SOME AREAS FOR IMPROVEMENT

- **Disappointing reporting after significant votes against**. This relates to Code Provision E.2.2 which requires companies to explain, when publishing meeting results, how they intend to engage with shareholders when a significant percentage have voted against a resolution. The report notes that some companies failed to make a statement, and for others the quality of disclosure was mixed.
- **Poor quality explanations of non-compliance**. The report notes that better explanations of non-compliance include company-specific context and background, reasons why the approach is in the interest of the company (not simply repeating the Code) and information on mitigating actions the company is taking to address the extra risk involved in the non-compliance.
- **Too little variation in viability statements.** The reports notes too little variation in time horizons and the need for clearer explanations and more alignment between business model, strategy, principal risks and viability (see next table also).
- **Boilerplate nomination committee reporting**. The report notes a tendency for nomination committee reporting to be boilerplate and that better reporting provides details of the committee's focus in the previous year and what the year ahead holds. Investors want clarity on the company's approach to board evaluation, succession planning and refreshment.

Annual review of corporate reporting 2015/2016. In October 2016, the FRC published its annual review of corporate reporting 2015/2016, giving its assessment of the state of corporate reporting in the UK, focusing on those aspects of annual accounts where it has monitoring powers, namely the strategic report and the financial statements. Although most of the annual review concerns financial statement issues which we do not cover in this briefing, we set out briefly key areas mentioned as regards narrative reporting.

FRC ANNUAL REVIEW – KEY MESSAGES ON NARRATIVE REPORTING

- **Are strategic reports sufficiently balanced?** A common area of challenge by the FRC is whether strategic reports are sufficiently balanced. For example, do they acknowledge when things have not gone well and include information of particular interest to investors?
- **Viability statements**. Some 75% of the statements that the FRC reviewed cover a three-year period. The FRC states that three years should not become the default and encourages companies to give better explanations of why and how they chose the period and the underlying analysis.
- **Business model and principal risk reporting**. Good business model and principal risk reporting gives valuable insights into the business and how it generates cash, and also how it operates more broadly and its culture. The FRC notes its Lab report on business model disclosure which aims to suggest characteristics of good reporting and practical ways that companies might meet investors' needs.
- **Increasing focus on companies' tax arrangements**. Companies need to respond to increasing stakeholder scrutiny of their tax strategies, including where they pay tax and whether their strategy is sustainable and what risks there are to it.
- **A broader range of disclosures**. FRC discussions with shareholders show a growing appetite for more disclosure on a broader range of issues, for example climate-related matters and culture.
- **Clear and concise reporting.** This remains a theme although the FRC recognises the challenges for companies.

End-of-year letter. In October 2016, the FRC sent its end-of-year letter to audit committee chairmen and finance directors. On narrative reporting, it covers many issues already mentioned. Other areas include: dividends, noting its FRC Lab Report on dividend disclosures which suggests a scaled approach to disclosure of available cash and distributable profits, but equally noting that the FRC position remains unchanged on the fact that the Companies Act 2006 does not require the separate disclosure of a figure or figures for distributable profits; remuneration, noting that investors want more clarity and brevity in remuneration reporting; and audit committee reporting, noting that investors want more information about the specific actions taken by audit committees.

Updated UK and US institutional guidance

The Investment Association. The IA has published some new papers relevant to the forthcoming season (in addition to its 2017 principles of remuneration noted earlier).

Board oversight of profit expectations and dividend policy. In May 2016, the IA published a letter signalling its concern with companies that made significant changes to their profit expectations or asset valuations and/or reduced their dividend policy after the appointment of new management. It now intends to "amber-top" such companies, ie note that there is a significant issue to be considered.

Share capital management guidelines. In July 2016, the IA revised its share capital management guidelines. They are the same as the previous version other than noting the IA's support for the Pre-Emption Group's template resolutions mentioned earlier, and that IVIS will red top any company not using them when seeking the extra 5 per cent resolution.

Guidelines on viability statements, November 2016. This is a new set of guidelines given the viability statements seen in the past year. They note that the IA's corporate governance research arm, IVIS, will continue to monitor viability statements, now on the basis of these guidelines. Matters that the guidelines cover include (i) period for the viability assessment (for example, the IA considers there should be more differentiation between companies and that periods longer than three or five years should be chosen); (ii) prospects and risks when assessing viability (for example, the viability statement could address sustainability of dividends); (iii) stress testing (for example, more transparency on the stress testing that has taken place, the likely outcomes and specific mitigation that may be needed); and (iv) qualifications and assumptions (for example, that assumptions and qualifications should be distinguished from each other and be company-specific).

Quarterly reporting and quarterly earnings guidance, November 2016. This is not relevant for annual reporting, but is worth noting for completeness. It is a new IA position paper in which the IA, among other things, calls for companies to cease quarterly reporting and refocus reporting on a wider range of strategic issues. See our December 2016 Quoted Company Newsletter for more.

The Pensions and Lifetime Savings Association 2017 corporate governance policy and voting guidelines. In January 2017, the PLSA issued its 2017 Corporate Governance Policy and Voting Guidelines which aim to promote the long-term success of the companies in which the PLSA's members invest and ensure that the board and management of such companies are held accountable to shareholders, such as pension funds.

PLSA GOVERNANCE POLICY AND VOTING GUIDELINES 2017 – SOME KEY POINTS

- **Executive remuneration**. Members to take a much stronger line on executive remuneration and on those who set it (see table earlier in this briefing).
- **Culture and working practices**. New recommendations, taken from the 2016 PLSA stewardship toolkit, for better disclosures on corporate culture and working practices that relate the way a company manages and engages its workforce to its wider strategy and business models including information on workforce composition, stability, training, skills and engagement levels.
- **Diversity**. Increased emphasis on boardroom diversity, noting the targets in the Hampton/Alexander and Parker reports respectively (see more below).

Institutional Shareholder Services - UK and Ireland proxy voting guidelines 2017. ISS is a US-based provider of corporate governance services that issues its own proxy research and vote recommendations to assist institutional investors in meeting their responsibilities with respect to voting. It has published its proxy voting guidelines and 2017 benchmark policy recommendations for the UK and Ireland which are effective for shareholder meetings on or after 1 February 2017.

Key changes to its guidelines include: (i) updates on remuneration including that it may give an adverse vote recommendation on the remuneration committee chair if there are serious breaches of good practice identified, typically over a number of years; (ii) clarification of language regarding what it regards as "overboarding" (too many directorships) and when and at which company it may give an adverse vote recommendation; and (iii) in relation to (amongst others) AIM companies, an expectation (from 1 February 2018) that, in line with the QCA Code, their audit and remuneration committees must be fully independent.

Glass Lewis - 2017 UK proxy season guidelines. Glass Lewis is another US-based provider of global governance services assisting institutional investors to engage with their investee companies. In November 2016, it issued its UK guidelines for the 2017 proxy voting season.

The key area of change, which is a notable change of policy for Glass Lewis, is that, following what it describes as constructive engagement with a number of UK companies, it has decided to change its policy with regard companies' resolutions for authority to call general meetings on only 14 days' notice. It will now generally support such resolutions so long as (i) such an authority has not previously been abused and (ii) as is best practice in the UK, companies provide assurances that such authority will not be used as a matter of routine and will only be used where there is an exceptional need for urgency and it is to the advantage of shareholders as a whole.

Other areas of update to the Glass Lewis guidelines include remuneration; when directors have material business or professional services relationships with their companies and director tenure.

Miscellaneous new and updated reporting requirements

New non-financial information statement and enhanced diversity disclosures. See the "Developments for 2018 or later" section below in relation to (i) the new non-financial information statement and (ii) the enhanced diversity disclosures, both of which have been brought into force for certain large companies for financial years commencing on or after 1 January 2017 as a result of an EU Directive. These disclosures, unless already covered, will feature in reporting in annual reports and accounts published in 2018. As explained in more detail below, although several of these "new" reporting requirements overlap with existing requirements, some are new and others are similar but more rigorous and may therefore entail some extra reporting by affected companies and hence preparation in the course of 2017 to achieve that.

Reporting on diversity on boards – Hampton/Alexander review – FTSE Women Leaders. In November 2016, Sir Philip Hampton and Dame Helen Alexander (tasked with building on the work of Lord Davies and his Women on Boards goals), published their report on improving gender balance in FTSE Leadership. The next stage focuses not only on board appointments but also on executive committee composition and on direct reports to the executive committees of FTSE 350 companies.

HAMPTON/ALEXANDER REVIEW – SOME RECOMMENDATIONS

- FTSE 350 companies to aim for at least 33 per cent of women on their boards by 2020.
- FTSE 100 companies to aim for at least 33 per cent of women across their executive committees and the direct reports to their executive committees by 2020.
- The FRC to amend the Code to require FTSE 350 companies to disclose more on the gender balance of their executive committees and their direct reports.

Reporting on ethnic diversity on boards – the Parker Review Committee consultation document. In November 2016, Sir John Parker and the Parker Review Committee published a consultation version of their report on the ethnic diversity of UK boards. This follows their having been invited, in late 2015, to conduct an Official Review of the ethnic diversity of UK boards, with the aim of suggesting ways of encouraging businesses to increase the ethnic diversity of boards. The consultation period is scheduled to end on 28 February 2017.

PARKER REVIEW – SOME RECOMMENDATIONS

- Increasing the ethnic diversity of boards to have at least one director of colour by 2021 for FTSE 100 companies and by 2024 for FTSE 250 companies.
- Companies that do not meet the board composition recommendations by the suggested dates should explain why not.
- Developing and promoting candidates of colour in the pipeline of board candidates.
- Enhancing transparency and disclosure. For example, the description of the board's policy on diversity in its annual report should include a description of the company's efforts to increase ethnic diversity in its business and on its board.

Reporting on the gender pay gap. This is not a reporting requirement for annual reports and accounts, but we note it briefly for completeness. The Government has decided to introduce mandatory gender pay reporting for large employers in Great Britain i.e. those in the private and voluntary sectors with 250 employees or more. Similar rules are also being introduced for large public sector employers. Draft regulations - The Equality Act (Gender Pay Gap Information) Regulations 2017 - setting out the detail of the new reporting rules were published on 6 December 2016 and are intended to come into force on 6 April 2017**.** For more, see our December 2016 briefing.

Reporting on business payment practices and policies – updated draft regulations

This is not a reporting requirement that relates to annual reports and accounts, but nonetheless as a long-awaited new reporting requirement, we mention it here for completeness.

In December 2016, the Department for Business, Energy and Industrial Strategy published its response and updated draft regulations on the proposed new mandatory duty to report on payment practices and performance. Broadly, large UK companies and LLPs, namely those not qualifying as medium-sized or smaller under standard Companies Act 2006 definitions, will be required to submit a report, every six months, onto a (freely-accessible) government web-based service, giving certain information on their payment terms and performance metrics. This includes a description of their standard terms and the maximum payment period as well as the average number of days they take to make payments to suppliers.

The regulations are intended to come into force on 6 April 2017. The first companies and LLPs to have to comply with the new duty to report (subject to exceeding the relevant thresholds on the relevant date or dates) are those with a financial year beginning on 6 April 2017. Such qualifying companies or LLPs will have to submit their first report within 30 days of the first six months of the financial year, namely by 6 November 2017.

Most businesses, however, will not have to report so soon. Qualifying companies and LLPs with 31 December and 31 March year-ends will have to submit their reports by 31 July 2018 and 31 October 2018 respectively. For more detail, see our December 2016 corporate briefing.

DEVELOPMENTS FOR 2018 OR LATER

2018 OR LATER – KEY DEVELOPMENTS
• The new non-financial information statement within the strategic report • Additional diversity disclosures in corporate governance statements • Miscellaneous European developments

New non-financial information statement within the strategic report

For some years, we have reported on the existence of the EU Directive on disclosure of non-financial and diversity information (2014/95/EU) (the Directive). It aims to provide shareholders and other stakeholders of certain large companies and groups with meaningful narrative information on certain non-financial and diversity matters.

Following a consultation on implementation of the Directive last year, The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 (the regulations) have been made and the government response on its consultation has been published. The regulations apply to financial years commencing on or after 1 January 2017, so reporting on this should feature in 2017 annual reports and accounts published in 2018.

As explained in more detail below, although several of these "new" reporting requirements overlap with existing strategic report requirements for listed companies, some are new and others are similar but more rigorous and may therefore entail some extra reporting by affected companies for which preparation in the course of 2017 may be required.

The new requirements have been kept separate from, and added on top of, the existing requirements for the strategic report in section 414C of the Companies Act 2006. Amongst other things, the regulations insert new sections 414CA and 414CB into the 2006 Act as regards a new non-financial information statement to sit within the strategic report. These sections apply to certain companies and qualifying partnerships.

As regards companies, sections 414CA and B apply to large UK listed companies. They also apply to large UK banking companies, authorised insurance companies and companies carrying on insurance market activities (applying to these three categories whether or not the companies in question are listed). Large broadly means with more than 500 employees and not being medium-sized or smaller under the Companies Act 2006 definitions. Where the company in scope is a parent company, a group statement is required.

Such businesses must, where necessary for an understanding of the company's development, performance, position *and the impact of its activity*, include in their strategic reports a non-financial information statement with prescribed contents – see the table below. Note that the words in italics (here and in the table) are not in the corresponding words that preface the main strategic review provisions in section 414C and so represent an element of difference between the two which companies will need to consider.

NON-FINANCIAL INFORMATION STATEMENT
Information to be included to the extent necessary relating to: • Environmental matters (including the impact of the company's business on the environment). • Employees. • Social matters. • *Respect for* human rights. • *Anti-corruption and anti-bribery matters.* **Aspects to be covered include**: • Policies pursued, *including due diligence processes implemented in pursuance of those policies*, on the above matters. • If no policies are pursued, a statement to that effect *and a clear and reasoned explanation of why not.* • Outcomes of those policies. • *Principal risks related to those matters arising in connection with the company's operations and, where relevant and proportionate, a description of its business relationships, products and services which are likely to cause adverse impacts in those areas of risk and how it manages those principal risks*. • Brief description of business model. • Description of relevant non-financial key performance indicators.

For UK listed companies that already comply with the enhanced reporting elements of section 414C of the 2006 Act in their strategic report, many of the reporting requirements in the regulations are not new (as mentioned, the new ones are in italics above) and reporting as currently undertaken will be largely sufficient. To that end, the new section 414CB (7) helpfully provides that complying with the contents requirements of 414CB (1 to 6) for the new information statement satisfies certain (**but note not all**) of the existing requirements of section 414C of the Companies Act 2006.

As a result of there being some differences between the current enhanced business reporting elements of the strategic report and the new information statement, companies in scope of the new requirements will need to assess and compare each requirement of the new information statement with the company's current reporting in its strategic report. Also, note that the new non-financial information statement must be a separate statement within the strategic report.

An example of a new requirement is reporting on anti-corruption and anti-bribery issues which are not areas that have featured as an obligatory reporting requirement of either the strategic report requirements of the 2006 Act or the UK Corporate Governance Code. These areas are likely therefore to need to be considered afresh from a reporting perspective. If a company considers it is necessary for it to report on these areas, the statement will need to describe (i) the policies and due diligence processes the company has in this regard (or that it does not have policies, giving a "clear and reasoned explanation" of why not) and the outcome of those policies; (ii) the principal risks arising in connection with the company's operations relating to anti-corruption and anti-bribery; and (iii) additional reporting, if thought "relevant and proportionate", which drills down into more detail in relation to its business relationships, products and services which are likely to cause adverse impacts on these areas of risk and how it manages those principal risks. Note ,however, that similar to (but again not identical to) the main strategic report, information about impending developments or matters in the course of negotiation which would, in the opinion of the directors, be seriously prejudicial to the commercial interests of the company can be omitted *provided that the non-disclosure does not prevent a fair and balanced understanding of the company's* *development, performance or position or the impact of the company's activity. (again,* new words in italics*).*

We still await the publication of non-binding guidance by the European Commission, as required by the Directive. This was due to be published in December 2016, but is now due in Spring 2017. We understand the FRC will be consulting on revisions to its strategic report guidance to take account of the regulations and this will hopefully help companies know what more they need to report.

Additional diversity disclosures in corporate governance statements

The Directive is also concerned with diversity matters and reporting on them in corporate governance statements. To effect this, for large listed companies, new DTRs 7.2.8A and B will broadly require similar information on diversity matters to that already required by the UK Corporate Governance Code in provision B.2.4.

Again, however, as with the new non-financial information statement discussed above, DTRs 7.2.8A and B are not entirely idkay entical to B.2.4, requiring information on the following (italics represent differences from the Code provision):

- the diversity policy applied including for example on *age*, gender*, or educational and professional backgrounds*;
- the objectives of the policy;
- *how it has been implemented*; and
- the results in the reporting period

Since the DTRs are mandatory (not operating on a comply or explain basis as the Code does), companies will need to consider their current diversity policies and practices and ensure its reporting can covers these areas for its 2017 annual reports and accounts.

Miscellaneous European developments

Proposed Directive to amend the Shareholder Rights Directive as regards encouragement of long-term shareholder engagement and certain aspects of the corporate governance statement. In our 2016 season briefing, we noted that, following the publication in April 2014 of the European Commission proposal to amend the Shareholder Rights Directive, this was still a proposal being negotiated in the Trilogue process whereby the European Commission, Parliament and Council try to work out a compromise on some contentious aspects.

This remains the case, although in December 2016 progress was made when negotiators endorsed a compromise agreement between the Slovak Presidency and the European Parliament. Next steps are understood to be final adoption of the proposal by the European Council and Parliament expected this year, followed by publication in the Official Journal, with, as usual, Member States having two years for implementation.

At this stage, the contents of the proposal centre around:

- Shareholder oversight of directors' remuneration.
- Ability for companies to ask intermediaries to identify shareholders.
- Facilitation of shareholder rights by intermediaries.
- Transparency by institutional investors, asset managers and proxy advisers.
- Shareholder approval of material related party transactions.

The proposed Directive on gender balance among non-executive directors of listed companies (the proposed gender balance directive). We also wrote about this proposed Directive in our 2016 season briefing. It remains a proposal albeit one that has stalled for some time. In the European Commission's document on "Strategic Engagement for Gender Equality 2016 – 2019", published in 2016, it states that it remains a goal to support adoption of the proposal for the Directive and reconfirms the goal of at least 40 per cent representation of the under-represented sex among non-executive directors of listed companies.

The UK corporate governance environment

Some key 2016 publications

Title	Date
Financial Reporting Council (FRC)	
Developments in corporate governance and stewardship 2016	January 2017
Amendments to FRS 101 and 102 – notification to shareholders	December 2016
Annual review of corporate reporting 2015/2016	October 2016
Reminders for half yearly and annual financial reports after EU Referendum	July 2016
UK Corporate Governance Code	June 2016
Guidance on audit committees	June 2016
FRC Financial Reporting Lab (Lab)	
Supplier relationships and emergent issues reporting	January 2017
Disclosure of dividends – policy and practice	December 2016
Business model reporting	October 2016
The Department of Business, Energy and Industrial Strategy (BEIS)	
The Companies, Partnerships and Groups (Accounts and Non-financial Reporting Regulations 2016 (2016 No. 1245)	December 2016
Green Paper on corporate governance reform	November 2016
The Statutory Auditors and Third Party Auditors Regulations 2016 (2016 No. 649)	June 2016
The Financial Conduct Authority (FCA)	
DTRs sourcebook instrument (2016/40)	June 2016
DTRs sourcebook instrument (2016/70)	November 2016
Prudential Regulation Authority	
Implementing audit committee requirements under the revised Statutory Audit Directive	May 2016
The Investment Association (IA)	
Principles of remuneration and accompanying letter	November 2016
Guidelines on viability statements	November 2016
Quarterly reporting and quarterly earnings guidance	November 2016
Executive remuneration working group, final report	July 2016
Board oversight of profits expectations and dividend policy	May 2016
The Pensions and Lifetime Savings Association (PLSA)	
Corporate Governance Policy and Voting Guidelines 2017	January 2017
AGM season report 2016	October 2016
Stewardship toolkit – understanding the worth of the workforce	July 2016
Pre-Emption Group	
Template resolutions for the disapplication of pre-emption rights	May 2016
Institutional Shareholder Services (ISS)	
Policy guidelines 2017	February 2017
Glass Lewis	
2017 proxy season guidelines	2017
GC 100 and Investor Group	
Directors' remuneration reporting guidance 2016	August 2016
Diversity related	
Hampton/Alexander review – FTSE women leaders	November 2016
Parker review committee consultation	November 2016
European Union	
EU Audit Regulation (EU/537/2014)	2014
EU Audit Directive (2014/56/EU)	2014
Commission delegated regulation (2014/1052/EU) on buyback programmes and other	2014
EU directive on disclosure of non-financial and diversity information (2014/95/EU)	2014
Strategic engagement for gender equality – 2016 -2019	2016

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