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2022 AGM and reporting season: what to expect

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Contents

INTRODUCTION

This briefing summarises developments to be aware of when preparing for 2022 annual general meetings and compiling the narrative aspects of annual reports. It is aimed principally at premium listed companies. It also covers some relevant developments for standard listed companies, AIM companies and large private companies. It may also be useful for such companies who choose voluntarily to comply with the UK Corporate Governance Code (Code) and any other legal or regulatory requirements applying to premium listed companies.

CONSIDERATIONS FOR 2022 AGMS

On AGMs, we:

- Consider what 2022 holds for AGMs given the continued impact of COVID-19 for a third consecutive season.
- Explore 'say on climate' resolutions which have increased in number in 2021.
- Take a brief look at other resolutions including to amend articles of association.
- Note key points from various updated voting guidelines which may impact 2022 AGMs.

CONSIDERATIONS FOR 2022 NARRATIVE REPORTING

On narrative reporting, we:

- Cover current and proposed climate-related reporting requirements.
- Consider remuneration reporting which always remains of interest to investors.
- Note publications from the Financial Conduct Authority, Financial Reporting Council and others on how companies can improve their corporate governance reporting.
- Explore significant proposals from the FCA to improve diversity performance and reporting.
- Consider a variety of other developments, including charting the progress of the new International Sustainability Standards Board.

A. CONSIDERATIONS FOR 2022 AGMs

CONSIDERATIONS FOR 2022 AGMS: *WHAT WE COVER*
1. AGMs in 2022
2. Say on climate resolutions
3. Other resolutions
4. Updated voting guidelines

1. AGMS IN 2022

In this section, we consider: (i) the continuing impact of COVID-19; (ii) AGM format and methods of engagement; and (iii) AGM guidance.

COVID -19

On 19 January 2022, the Prime Minister announced the removal of many COVID-19 related restrictions.

Nonetheless, the pandemic still continues and boards must continue to pay close attention to any COVID-19 guidance and, should it materialise, any new relevant legislation both when sending the notice out and at the time of the meeting. The health and safety of all participants remains paramount; flexibility and preparation remain vital.

As with the previous two years, the wording and tone of AGM notices and announcements should be carefully considered. This is particularly the case as regards the extent to which a company chooses to encourage or discourage shareholder attendance and as regards any permitted health and safety measures as well as measures to augment shareholder engagement.

Permitted health and safety measures to safeguard attendees at meetings can include some or all of the below.

COVID-19: *POSSIBLE PRECAUTIONS*

- Well-ventilated meeting rooms with good spacing of chairs and hand-sanitiser.
- Preventing attendance by guests (other than carers accompanying a shareholder).
- Not offering refreshments before and after the meeting.
- Encouraging lateral flow testing before setting off for the meeting.
- Encouraging, and offering, face coverings.
- Encouraging attendees to confirm they have not recently tested positive for COVID-19, are not displaying symptoms and do not need to self-isolate.
- Not allowing directors to mingle with shareholders.
- Having additional personnel (but kept to a minimum) at the meeting location (even if not in the room) to ensure its proper conduct and safe operation.

AGM format and engagement

Options for holding AGMs remain threefold (i) traditional physical meetings, (ii) hybrid meetings (i.e. a physical meeting with an electronic component allowing electronic voting) and (iii) fully virtual meetings (with no physical element). As has been the case for some time, several institutional shareholder groups including the Investment Association (IA) (see its 2017 Position Statement) still do not favour fully virtual meetings. There also still remains doubt as to the validity of such meetings under the Companies Act 2006.

Hybrid AGMs. According to PLC What's Market's Insights and Trends report for 2021 (PLC WM 2021 review), whilst many companies amended their articles of association in 2021 to facilitate hybrid meetings (see section A.3 below), the number of companies actually holding hybrid meetings, although increasing, remains low. The review notes some 23 companies held hybrid AGMs in 2021. The table which follows contains some tips for hybrid meetings.

HYBRID AGMS: *PRACTICAL POINTS*

- **Articles of association**. Ideally, articles of association should be amended to facilitate hybrid meetings, and may need to be amended in any event.
- **AGM planning**. AGM planning and IT testing should be started much earlier for a hybrid meeting, given the work involved. The amount of additional legal work and management time should not be under-estimated.
- **Extra action points**. These may include: meetings of the various participants in the hybrid meeting process (see below); extra drafting in AGM notices to make the running of the meeting clear to shareholders; deciding with the technology provider an approach if the technology fails for some or all participants and communicating that to all those who need to know; and practice sessions to ensure confidence about the process on the day.
- **AGM committee**. Consider establishing an AGM committee consisting of representatives of relevant teams within the company, the registrars and the technology providers (e.g. Apps, webcasts etc.), especially if it's your first time holding a hybrid meeting.

Hybrid AGMs are still relatively new. While some have been an undoubted success, for many the lack of shareholder engagement with the model means that the cost benefit analysis is yet to be compelling. Companies should consider, amongst other things, the nature of their shareholder base, the views of their shareholders and the costs and logistics involved before proceeding with such a format.

Physical AGMs. For the above reasons, and COVID-19 permitting, physical AGMs seem likely to be the option that many companies will prefer in 2022. In our 2021 season briefing, we noted the FRC's encouragement for companies to augment their shareholder engagement at physical AGMs. The FRC's guidance '**AGMs: An opportunity for change' (October 2020),** includes an Annex of Best Practice Guidance and some suggestions are set out in the next table by way of reminder.

SHAREHOLDER ENGAGEMENT: *OPTIONS*

- Early preparation including talking to technology providers as to how engagement can be facilitated.
- Dedicated areas of websites for AGM updates should they be needed.
- Information in notices on submitting questions in advance.
- Transparency on the approach that will be taken to grouping of questions when companies respond.
- Uploading transcripts of any Q&A after the meeting.
- Webcasts at meetings instead of audio-only calls.

According to the PLC WM 2021 review, during 2021, of 272 companies surveyed, some 85 per cent (83 FTSE 100 and 149 FTSE 250 companies) permitted questions in advance of the AGM, and some 74 per cent (75 FTSE 100 and 127 FTSE 250 companies) included a statement in their notice as to how answers to shareholder questions would be provided. 20 companies held a separate shareholder event as well as an AGM.

Although companies should consider appropriate means to facilitate shareholder engagement, they should also, given uncertainty caused by COVID-19, continue to stress in their AGM notices that shareholders should appoint the chair of the meeting as their proxy to vote on their behalf in order to ensure that their vote will be counted if ultimately they (or any other proxy they appoint) are not able to attend the meeting.

AGM guidance

There is a considerable body of guidance on AGMs that companies may find useful. The key ones are set out below by way of reminder.

- **February 2021, Corporate Governance Institute** (CGI, formerly ICSA)– 2021 general meetings and the impact of COVID - 19. This was issued at a time of lockdown and when rules limiting gatherings and travel were in place. Nevertheless, much of the guidance remains useful including analysis of legal issues and good practice recommendations.
- **January 2021, GC100, discussion paper - Shareholder Meetings – Time for Change**. Overall aims of the paper include broadening engagement from geographically-diverse shareholders and stakeholders and encouraging the updating of legislation to better meet the needs and expectations of companies and the communities within which they operate.
- **October 2020, FRC guidance – AGMs: An opportunity for change** This includes best practice guidance on matters such as meeting preparation, facilitating questions, using webcasts and proxy voting.

2. SAY ON CLIMATE RESOLUTIONS

We first mentioned 'say on climate' resolutions in our 2021 AGM season briefing. The number of such resolutions have increased in 2021 and the views of proxy advisers and others have developed. In this section, we look at (i) what we have seen in 2021, (ii) Glass Lewis's (GL) approach and (iii) Institutional Shareholder Services' (ISS) approach.

What we have seen in 2021

Say on climate resolutions were proposed at some 13 FTSE 350 2021 AGMs, a significant increase on 2020. In a further change from 2020, most resolutions were proposed by management.

The resolutions vary as to their purpose, although the most common types were (i) for board proposed resolutions - seeking approval of climate transition plans/strategies and (ii) for shareholder requisitioned resolutions - requesting the company to disclose more, particularly by way of its climate-related targets.

Perhaps unsurprisingly, companies most affected were in the oil and gas, mining and utilities sectors (e.g. Glencore, BP, National Grid, BHP, Severn Trent, SSE and Royal Dutch Shell). There were also several financial institutions (e.g. Barclays, HSBC, Aviva and Investec).

All board-proposed say on climate resolutions were passed. All shareholder-requisitioned resolutions failed, but it is noteworthy that the IA Public Register shows that resolutions at two companies (BP and Royal Dutch Shell) received over 20 per cent support. As a consequence both companies made statements in accordance with Provision 4 of the Code on what actions they intend to take to consult shareholders to understand the reasons behind the vote, and both gave subsequent updates on views received and actions taken.

Proxy advisers and others have concerns about say on climate resolutions. Both GL and ISS have confirmed their policies during 2021 which we consider below.

Glass Lewis

In November 2021, GL published its ESG Insights 2022 Policy Guidelines. The ESG guidelines focus on the rights of shareholders to propose certain ESG-related resolutions, and are aimed in particular at those countries where shareholder resolutions are relatively common. This means that much of it is not relevant for the UK. However, the ESG guidelines set out GL's detailed views on say on climate resolutions.

Broadly, GL supports robust disclosure by companies of climate strategies and climate-related risks and opportunities. However, it has concerns with say on climate votes for a number of reasons. Fundamentally, it believes that a company's business strategy is best set by the board, which has a fiduciary duty to shareholders and it does not wish to see the board abdicate this responsibility, whether in whole or in part, to shareholders. It also has concerns that shareholders are being asked to make voting decisions with potentially incomplete information, for example as to operational changes and related costs.

GL and shareholder proposals. When shareholders request companies propose a say on climate vote, GL will generally recommend voting against. When evaluating such proposals, it will note and potentially consider: the substance of the proposal; the company's existing climate governance framework, initiatives and reporting; the company's industry and size; and the company's exposure to climate-related risks. It will look more sympathetically on requests for the production of climate transition plans which are disaggregated from proposals for shareholders to be given a vote on these plans.

GLASS LEWIS: *MANAGEMENT PROPOSALS FOR SAY ON CLIMATE RESOLUTIONS*

Say on climate vote

On proposals for say on climate votes, GL wants/will view favourably disclosures on:
- the board's role in setting strategy in light of the vote;
- how the board intends to interpret the results of the vote; and
- how the board engages with investors prior to and after the vote.

Where such disclosures are **not** present, GL will either recommend that shareholders **abstain**, or, depending on the quality of the transition plan (see below), vote **against** the proposal.

Transition plans (TP)

The quality of a TP is to be evaluated on a case-by-case basis. GL expects a distinct and easily understandable document, which should be aligned with recommendations of the Taskforce for Climate-Related Financial Disclosures (TCFD) and which clearly explains:
- the company's goals;
- how its greenhouse gas (GHG) emissions targets support achievement of broader goals; and
- any foreseeable obstacles that could hinder progress.

Additional factors that GL will take into account include:
- the purpose of the resolution (e.g. whether companies are asking shareholders to approve its disclosure or its strategy);
- the board's role in overseeing the company's climate strategy;
- the company's industry and size;
- whether the company's GHG emissions targets and its disclosure appear reasonable given its operations and risk profile; and
- where the company is on its climate reporting 'journey'.

Institutional Shareholder Services

In December 2021, ISS issued its Benchmark Policy Updates and Proxy Voting Guidelines for the UK and Ireland for meetings taking place from 1 February 2022. For more on other changes to the guidelines, see section A.4 below, but here we cover ISS's policy on say on climate resolutions.

ISS and shareholder proposals. ISS will vote on a case-by-case basis on shareholder proposals that request a company to disclose a report providing its GHG emissions levels and reduction

targets and/or its upcoming/approved climate transition action plan and provide shareholders the opportunity to express approval or disapproval of its GHG emissions reduction plan. In doing so, ISS will take into account information including: the completeness and rigour of the company's climate-related disclosure; the company's actual GHG emissions performance; and whether the company has been the subject of recent, significant violations, fines, litigation, or controversy related to its emissions. It will also consider whether the proposal is unduly burdensome (as to its scope or timeframe) or overly prescriptive.

ISS: *MANAGEMENT PROPOSALS FOR SAY ON CLIMATE RESOLUTIONS*

ISS will generally vote on a case-by-case basis on proposals that request shareholders approve a company's climate transition action plan, taking into account the completeness and rigour of the plan. ISS will consider a variety of information where available including***:***

- TCFD alignment;
- disclosure of operational and supply chain GHG emissions (Scopes 1, 2, and 3);
- the completeness and rigour of a company's short, medium, and long-term targets for reducing operational and supply chain GHG emissions;
- third-party assurance that targets are science-based and third party assurance in general;
- commitment to 'net zero' for operational and supply chain emissions by 2050 and to annual reporting on the implementation of that plan;
- alignment of lobbying activities and capital expenditure with company strategy;
- specific industry decarbonization challenges; and
- commitment, disclosure, and performance compared to industry peers.

3. OTHER RESOLUTIONS

Resolutions to amend articles

Continuing the upward trend from 2020, considerably more companies amended their articles of association in 2021. According to the PLC WM 2021 review, 37 per cent of 272 companies (39 FTSE 100 and 61 FTSE 250 companies) amended their articles of association. Of these, 92 were amendments for electronic attendance at meetings and a substantial number stated that the proposed amendments did not permit the holding of virtual only meetings, i.e. were to facilitate hybrid meetings.

As we noted in last year's briefing, it remains the case that that the IA and ISS do not support virtual only AGMs, whilst GL is more relaxed subject to certain undertakings being given as regards shareholder information and participation. Companies should continue to ensure that any changes to articles of association to facilitate electronic meetings are clear that they do not intend to allow virtual only meetings.

Other common changes to articles of association, continue to include changes to: give companies greater flexibility regarding the treatment of untraceable shareholders and unclaimed dividends; allow companies greater flexibility on how they pay dividends including the ability to compel a shareholder to receive a dividend by bank transfer rather than cheque; and increase the cap on non-executive director fees.

In December 2021, the FCA issued its feedback statement and final rules following its Primary Markets Effectiveness Review (CP 21/21). Among the changes, LR 13.8.10 (amendments to constitution) has been amended. It now provides (effective 10 January 2022) that where a circular includes a summary of the proposed changes to articles of association, as is often the case, there must be a statement that the full terms of the proposed amendments will be available for inspection: at the place of the general meeting for at least 15 minutes before and during the meeting (same as before); and on the national storage mechanism from the date of sending the circular. The latter relaces the previous physical inspection requirement which had required that full terms should be available for inspection at a place at or near the City of London.

For completeness, note that this change has also been made to LRs 13.8.11 and 13.8.14 as regards employees' share scheme and long-term incentive schemes.

Failed resolutions and significant dissent

Headline points from the PLC WM 2021 review include the following.

- Similar total number of failed resolutions – 24 in 2021 (23 in 2020).

- More failed pre-emption disapplication resolutions - 7 in 2021 (2 in 2020).
- More substantial votes against (20-49.9 per cent) directors' remuneration resolutions: 33 against annual remuneration reports in 2021 (17 in 2020) and 17 against remuneration policy in 2021 (15 in 2020).

4. UPDATED VOTING GUIDELINES

In this section we cover (i) IA priorities for *2021* (ii) investor approach on pensions (iii) ISS's 2022 policy updates and (iv) GL's 2022 policy updates.

IA shareholder priorities 2021

At the time of writing, the IA's 2022 shareholder priorities for listed companies document have *not* been published. By way of reminder, the IA shareholder priorities for listed companies, January 2021 outlines: areas that IA members want to be prioritised and their expectations; actions the IA will take including the approach of the its governance arm – the Institutional Voting Information Service (IVIS); and progress made. The table below highlights the key changes in the areas of climate change and diversity, *although note these could become more onerous when the IA 2022 priorities are published.* As and when they are published, we will cover them in a subsequent Ashurst Governance and Compliance Update.

IA SHAREHOLDER PRIORITIES FOR LISTED COMPANIES IN 2021: *SOME KEY POINTS*

- **Climate change, for 2021.** IVIS for the first time would Amber Top (to raise awareness of areas which require a significant shareholder judgement) its reports on companies in high-risk sectors that do not address all four pillars (governance; risk management; strategy; and metrics/ targets) of the TCFD final report. It regards as high risk those sectors identified by the TCFD, namely Financials, Energy, Transportation, Materials and Buildings, and Agriculture, Food and Forest Products.
- **Diversity for 2021.** IVIS would Amber Top FTSE 350 companies that did not disclose either the ethnic diversity of their board or a credible action plan to achieve the Parker Review targets.
- On gender diversity for FTSE 350 companies, IVIS would Red Top (indicating the IA's strongest level of concern and highlights a serious breach of IA guidelines) those that have female representation of 30% or less on their board; and those that have female representation of 25% or less in their executive committee and its direct reports.
- On gender diversity for companies below the FTSE 350, IVIS would Amber Top those that have female representation of 30% or less on their board; and those that have female representation of 25% or less in their executive committee and its direct reports.

Pensions and voting: 2022 investor approach

IA. In November 2021, the IA reiterated its guidance that pension contributions for executive directors should be fully aligned with a company's wider workforce by 31 December 2022.

To support this position IVIS will:

- **Red Top** any new remuneration policy that does not explicitly state that an appointed executive director will have their pension contribution set in line with the majority of the workforce.
- **Red Top** any remuneration report where executive pension contributions are not aligned to the majority of the workforce or where there is no credible action plan to align pension contributions for incumbent directors by the end of 2022**.**

GL expects that new executive directors should be appointed on the same level of pension contribution as the wider workforce. While it recognises that pension rates for incumbents may need to be reduced over time, it does expect additional disclosure regarding a remuneration committee's commitment to reduce such contributions for incumbent executives by the end of 2022.

ISS. The latest ISS guidelines also highlight that they will be paying close attention to the extent to which director pension contributions are aligned with the wider workforce.

ISS 2022 proxy voting guidelines

In December 2021, ISS published its Benchmark Policy Updates and its Proxy Voting Guidelines for the UK and Ireland for meetings taking place from 1 February 2022. Key updates, as well as its

approach on say on climate resolutions already discussed in section A.2 above, include:

- **New policy on board accountability on climate for significant GHG emitters**. ISS will generally vote against the chair of the board of "*significant GHG emitters*" where ISS determines that a company is not taking the "*minimum steps*" needed to understand, assess and mitigate climate change risks to the company and the larger economy. "*Significant GHG emitters*" are those on the current Climate Action 100+ Focus Group list (which comprises 167 focus companies and which can be accessed from the CA100+ website).

  Minimum steps to understand and mitigate those risks for 2022 are listed and focus on: (i) detailed disclosure of climate-related risks (such as set out by the TCFD, including board governance measures; corporate strategy; risk management analysis; and metrics and targets) and (ii) appropriate GHG emissions reduction targets. Targets for scope 3 emissions are not required for 2022 but should cover at least a significant portion of the company's direct emissions.

- **Policy on gender diversity**. ISS has slightly bolstered its policy on board gender diversity. As mentioned in our briefing last year, ISS will generally recommend against the nomination committee chair (or other directors on a case-by-case basis) in: (i) FTSE 350 companies where the board does not comprise at least 33 per cent women; and (ii) in AIM companies with a market capitalisation over £500 million, FTSE SmallCap companies and ISEQ 20 companies where there is not at least one woman on the board (investment trusts are excluded). However, this year there is a reduced list of mitigating factors that ISS will consider where these targets have not been met.

- **Policy on ethnic diversity.** ISS will generally recommend a vote against the chair of the nomination committee (or other directors on a case-by-case basis) of a FTSE 100 board (excluding investment companies) that has not appointed at least one person from an ethnic minority background to the board.

  Certain other companies (FTSE 250; FTSE SmallCap; ISEQ 20; and AIM companies with a market capitalisation of over GBP 500 million) are expected to disclose a roadmap towards compliance with the same target by 2024.

- **Environmental, social and governance (ESG) performance conditions for executive remuneration.** ISS will allow ESG performance conditions to be used in executive remuneration but targets should be material to the business and quantifiable, and there should be a clear link between the objectives chosen and the company's strategy.

GL 2022 guidelines

GL has published its 2022 policy guidelines for the UK for meetings taking pace from 1 January 2022 and its 'Approach to executive compensation given COVID-19'. Key changes include:

- **Diversity of ethnicity.** GL will generally recommend against the re-election of the chair of the nomination committee at a FTSE 100 board that has failed to appoint at least one director from a minority ethnic group and has not given a clear and compelling reason why.

- **Remuneration committee performance and accountability**. GL may recommend that shareholders vote against the re-election of the remuneration committee chair where there are substantial concerns with the remuneration policy presented and/or the pay practices outlined in the remuneration report. In particularly egregious cases or where there are ongoing concerns with a company's remuneration policy or practices, GL will continue to recommend that shareholders vote against the re-election of all remuneration committee members.

- **Environmental and social risk oversight**. GL will generally recommend that shareholders vote against the re-election of the governance committee chair (or equivalent) of FTSE 100 companies that fail to provide explicit disclosure on the board's role in overseeing material environmental and social issues.

Other voting guidelines.

Neither the Pensions and Lifetime Savings Association nor Pensions Investment Research Consultants have published their updated voting guidelines at the time of writing. We will cover these in a subsequent Ashurst Governance and Compliance Update where appropriate.

B. CONSIDERATIONS FOR 2022 NARRATIVE REPORTING

CONSIDERATIONS FOR NARRATIVE REPORTING IN 2022: *WHAT WE COVER*
1. Extensions for publication of financial information
2. Climate-related financial reporting
3. Remuneration reporting
4 .Corporate governance reporting
5. Diversity reporting
6. Other reporting developments

1. EXTENSIONS FOR PUBLICATION OF FINANCIAL INFORMATION

In January 2021, the FCA and FRC issued a joint statement and the London Stock Exchange also issued an Inside AIM edition, each reminding companies that COVID-19-related extensions continue to apply to the publication of financial information (see table).

At the time of writing, these extensions continue to apply, but it is likely that they could be withdrawn if COVID-19 recedes.

FINANCIAL INFORMATION EXTENSIONS: *KEY POINTS*	
Listed companies	An additional two months to publish annual financial reports (i.e. within six rather than four months of the year end). An additional month to publish half yearly financial reports (i.e. within four rather than three months of the half year end).
AIM companies	An AIM company's nominated adviser can **apply** to AIM Regulation, prior to the company's reporting deadline, for an extension of up to three months from the deadline for publishing its annual accounts and one month for its half yearly results.
All companies	All companies may apply to Companies House for a three month extension in which to file an annual financial report citing COVID-19 in their application.

2. CLIMATE-RELATED FINANCIAL REPORTING

The impetus behind climate-related financial reporting by increasing numbers of entities continues. The table below provides a summary before we consider in more detail (i) requirements for premium listed companies; (ii) requirements for standard listed companies; (iii) requirements for publicly quoted companies, large private companies and LLPs; and (iv) other developments including proposals for company net zero transition plans.

CLIMATE RELATED FINANCIAL REPORTING: *AT A GLANCE*	
TCFD reporting: premium listed companies: **IN FORCE**	New listing rules (see more below) are in force for premium listed companies for accounting periods beginning on or after 1 January 2021. The first TCFD reports in compliance will be published in 2022.
TCFD reporting: standard listed companies: **IN FORCE**	The FCA issued a response to its consultation in December 2021 (PS 23/21). TCFD-aligned reporting for standard-listed companies is required for accounting periods beginning on or after 1 January 2022. The first reports in compliance will be published in 2023 (see more below).
TCFD reporting: asset managers, life insurers and FCA-regulated pension providers: **IN FORCE FOR SOME**	The FCA issued its response to its consultation in December 2021 (PS 24/21) as regards TCFD-aligned reporting for asset managers, life insurers and pension providers. (We will not cover this more in this briefing. See Financial Services Speedread for 23 December 2021 for headline information on this).
TCFD-aligned reporting: publicly quoted companies, large private companies, and LLPs **NOT IN FORCE**	The government issued its response to its consultation in October 2021. Final regulations have now been made for publicly quoted companies, large private companies, and LLPs with effect for accounting periods beginning on or after 6 April 2022, with first mandatory reporting in 2023 (see more below).

Premium listed companies: TCFD reporting

The basics. We set out in the table below the basics of the TCFD reporting regime for premium listed companies. For more detail, see our January 2021 client briefing New Climate-Related Reporting in Annual Financial Reports by Premium Listed Commercial Companies.

NEW TCFD REPORTING LISTING RULE FOR PREMIUM LISTED COMPANIES: *KEY POINTS*	
Who?	The new listing rule applies, on a 'limited' comply or explain basis, to all premium listed commercial companies (i.e. not to open-ended or closed-ended investment companies), including sovereign controlled commercial companies and overseas companies, i.e. companies that are subject to chapters 9 and 21 of the Listing Rules.
When?	The new listing rule applies to accounting periods beginning on or after 1 January 2021.
What?	The key elements of the listing rule (LR 9.8.6(8)) require a relevant company to make a statement (the compliance statement) in its AFR setting out:
	• whether it has included in its AFR climate-related financial disclosures consistent with the four recommendations and 11 recommended disclosures (TCFD disclosures) of the 2017 final report of the TCFD;
	• where it has included some or all of the TCFD disclosures in a document other than the AFR, a description of that document and where it can be found, an explanation of which disclosures are in that other document and the reasons why they are there and not in the AFR;
	• where it has not complied with some or all of the TCFD disclosures in any document, the disclosures that are omitted, the reasons for the non-disclosure and any steps it is taking or plans to take to be able to make these disclosures in the future and the timeframe within which it expects to be able to disclose; and
	• where in its AFR or other document the TCFD disclosures can be found.
Where?	The compliance statement under the new listing rule must feature in the AFR. However, the TCFD disclosures themselves can feature in a document other than the AFR, in which case the company must make the additional disclosures listed above including explaining why they are in that other document. The FCA also notes that the listing rule does not preclude companies from including more detailed supplemental disclosures in other documents that are more tailored to specific stakeholders.
How?	The listing rule contains a variety of guidance at LRs 9.8.6B, C, D, E and F. Amongst other things, these rules:
	• list the TCFD guidance that the FRC expects entities to "*take into account*" as part of their "*detailed assessment*" of whether their disclosures are consistent with the TCFD disclosure requirements;
	• list additional TCFD guidance that is "*relevant*" to that assessment;
	• state that a company should consider whether its disclosures provide sufficient detail to enable users to assess the company's exposure to and approach to addressing climate-related issues (with relevant factors to be considered including: (i) the level of its exposure to climate-related risks and opportunities; and (ii) the scope and objectives of its climate-related strategy);
	• state that the FCA would ordinarily expect a relevant listed company to make the TCFD disclosures in all cases "*except where it faces transitional challenges in obtaining relevant data or embedding relevant* modelling *or analytical capabilities*" and even then a company should also explain any steps that it is taking or plans to take to be able to make those disclosures in the future and the timeframe within which it expects to be able to make those disclosures; and
	• state what is expected as regards disclosures on transition plans where relevant country net zero commitments are in place.

Recent FCA TCFD-related developments and publications. Since implementing TCFD reporting for premium listed companies, the FCA has issued some additional guidance both in the LRs themselves and elsewhere, as follows.

- **Transition plans**. The FCA has introduced further guidance on transition plans (in LRs 9.8.6 F and 14.3.32) for both premium and standard listed companies. It requires that, when making disclosures on transition plans as part of strategy disclosures under the TCFD disclosures, a listed company that is headquartered in, or operates in, a country that has made a commitment to a net zero economy (such as the UK's commitment under the Climate Change Act 2008 (2050 Target Amendment) Order 2019) is encouraged to assess the extent to which it has considered that commitment in developing and disclosing its transition plan. Where it has not done so, it is encouraged to explain why. This new guidance is applicable for financial years beginning on or after 1 January 2022 although companies may decide to comply earlier voluntarily.
- **Metrics and targets**. The FCA has also incorporated references in LRs 9.8.6C and 14.3.29 to the TCFD's new guidance on 'Metrics, Targets and Transition Plans' and the TCFD's latest 'Implementation annex'.
- **FCA expectations and supervisory strategy**. In November 2021, the FCA published Primary Market Bulletin, Issue No. 36 in which it set out further information on its TCFD-related disclosure expectations and supervisory strategy. In short, the FCA emphasises that while it will be responsible for monitoring and, where necessary, enforcing compliance with the TCFD reporting Listing Rules requirements applicable to premium and standard-listed issuers, the FRC will also play a significant role given its regulatory role scrutinising annual reports.
- **Updated technical note on ESG.** The FCA has issued an updated Technical Note: Disclosures in relation to ESG matters, including climate change (801.2). It replaces previous Technical Note (801.1) and includes minor updates to reflect the extension to standard listed issuers and the new guidance mentioned above.
- **FCA consultation on new TCFD technical note 802.1.** The FCA has also issued a consultation on a new technical note on TCFD aligned climate-related disclosure requirements for listed companies. The consultation closed on 13 December 2021.

Other TCFD-related guidance. As well as FCA guidance, other guidance has been published to assist companies with TCFD reporting.

- **Financial Reporting Lab (FR Lab) report on 'TCFD ahead of mandatory reporting: developing practice'**. This aims to help companies prepare for TCFD reporting and includes practical advice as well as examples of TCFD reporting extracted from the reports of voluntary early adopters. It also sets out questions to be addressed in relation to each of the four pillars of the TCFD recommendations.
- **FR Lab 'Reporting framework snapshots: TCFD reporting'.** This short document sets out how the TCFD framework operates, describes the UK regulatory and market context, and provides statistical analysis of current UK reporting practice.
- **FRC published research on 'Climate scenario analysis: current practice and disclosure trends'**.This report aims to shed light on why and how companies get started with climate scenario analysis. It highlights practical steps, challenges and best practices. It considers process, approach and governance adopted by companies (including the teams, functions and committees involved and how scenarios are selected and modelled) as well as outcomes (including how climate scenario analysis outcomes influence strategic planning and decision-making and the extent, and quality, of reporting of findings to external stakeholders).
- **London Stock Exchange guide on 'Understanding climate risk and opportunity: Your guide to climate reporting'**. The guide is aimed at London-listed companies, regardless of sector, size or stage of their transition journey, to support best practice as regards the TCFD recommendations. It aims to help companies understand the issues and start gathering and reporting the relevant information.

For completeness, it is worth noting that in 2021 the FR Lab issued further guidance in the area of climate change:- Streamlined energy and carbon reporting and Reporting on risks, uncertainties, opportunities and the use of scenarios.

Standard listed companies: TCFD reporting

In December 2021, the FCA published a Policy Statement (PS 21/23) which extends the application of its climate-related financial disclosure requirements beyond premium listed companies to certain standard listed companies. Those newly in scope are issuers of; (i) standard listed equity shares; (ii) standard listed GDRs representing equity shares; and (iii) standard listed shares other than equity shares.

The rules and applicable guidance are found in LR 14.3.27 et seq. for issuers of standard listed equity shares and by virtue of LR 18.4.3 for issuers of GDRs and of shares other than equity shares. They apply for financial periods beginning on or after 1 January 2022 and so first reporting in compliance by such companies will be published in 2023. The new guidance mentioned above on metrics, targets and transition plans is also of application to such issuers.

Other companies: "TCFD-aligned" reporting

In October 2021, the Government published its response to its consultation on mandatory climate-related disclosures by publicly-quoted companies, large private companies and LLPs. On 17 January 2022, the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 were made. They come into force on 6 April 2022 for financial years of those in scope beginning on or after that date. First reporting in compliance will be published in 2023. The disclosure requirements will apply to:

- all companies that are currently required to produce a non-financial information statement (NFIS), being UK companies that have more than 500 employees and have either transferable securities admitted to trading on a UK regulated market (such as the main market of the London Stock Exchange), or are banking companies or insurance companies;
- UK registered companies with securities admitted to AIM with more than 500 employees;
- UK registered companies which are not included in the above categories, which have more than 500 employees and a turnover of more than £500 m; and
- LLPs which have more than 500 employees and a turnover of more than £500 m

As with the existing NFIS, subsidiaries are exempted if they meet specified conditions as set out in section 414CA (8) of the Companies Act 2006 one of which is inclusion in the group strategic report

In-scope companies and LLPs will be required to disclose climate-related financial information "***in line with"*** the four overarching pillars of the TCFD recommendations as follows:

DISCLOSURE REQUIREMENTS FOR PUBLICLY QUOTED COMPANIES AND LARGE PRIVATE COMPANIES AND LLPS: *THE BASICS*

- A description of the company's governance arrangements for assessing and managing climate-related risks and opportunities.
- A description of how the company identifies, assesses, and manages climate-related risks and opportunities.
- A description of how processes for identifying, assessing, and managing climate-related risks are integrated into the company's overall risk management process.
- A description of the principal climate-related risks and opportunities arising in connection with the company's operations, and the time periods by reference to which those risks and opportunities are assessed.
- A description of the actual and potential impacts of the principal climate-related risks and opportunities on the company's business model and strategy.*
- An analysis of the resilience of the company's business model and strategy, taking into consideration different climate-related scenarios.*
- A description of the targets used to manage climate-related risks and to realise climate-related opportunities and of performance against those targets.*
- A description of the key performance indicators used to assess progress against targets for managing climate-related risks and realising climate-related opportunities and of the calculations on which those key performance indicators are based.*

Companies will be required to report climate-related financial information in their Strategic Report in a newly named 'Non-Financial and Sustainability Information Statement'. LLPs will be required to report this information in either

their NFIS or the Energy and Carbon Report, which form part of their Annual Report.

The regulations contemplate that directors can omit climate-related disclosures if they "*reasonably believe that, having regard to the nature of the company's business, and the manner in which it is carried on, the whole or a part of a climate-related financial disclosure required by [the asterisked paragraphs in the table above] is not necessary for an understanding of the company's business.*" In doing so, a company will have to "*provide a clear and reasoned explanation of the directors' reasonable belief*" as to why the omitted information is not necessary.

Government guidance to help companies comply with the new disclosures will be published in due course, but is not available at the time of writing.

Other climate and sustainability reporting related developments

In October 2021, the Government published its Greening Finance Roadmap. Amongst its proposals, the Government plans to introduce mandatory requirements for listed companies (among other organisations) to publish net zero transition plans setting out how they intend to adapt in the transition to a low-carbon economy. To that end, it has published a Fact Sheet which contains guidance and more detail on what a transition plan is and what will be required. It plans to launch a high-level 'Transition Plan Taskforce' to develop standards for transition plans and associated metrics which should report by the end of 2022. For more on the roadmap, see our Financial Regulation Update here.

In November 2021, the International Sustainability Standards Board was set up. See section B 6 below for more on this.

3. REMUNERATION REPORTING

The IA, ISS and GL were quick to recognise that companies needed to adapt their remuneration policies over the past two years to show alignment between executive pay and the experience of key stakeholders, particularly their workforce, in light of COVID-19. Reputational risks remain high for companies making unjustified or inappropriate payments to executive directors which are not sensitive to the impact of the pandemic on company performance. ESG also remains a hot topic, with proxy advisors emphasising the importance of linking ESG measures to executive pay-outs.

The main developments this year are outlined below. These focus largely on the principles and guidelines published by the IA, ISS and GL.

IA on COVID-19 and remuneration

The initial waive of the COVID-19 pandemic and its aftermath resulted in tailored guidelines on shareholder expectations for executive remuneration practices during the pandemic. The most recent IA Principles of Remuneration, published in November 2021, noted that IA's earlier guidelines published in April 2020 on "Shareholder Expectations on Executive Remuneration during the COVID-19 pandemic" continue to remain relevant. Companies should continue to acknowledge and adhere to them, where relevant. Key points include the following.

IA: COVID-19 AND REMUNERATION: *KEY POINTS*

- **Where government aid has been sought and not paid back**: The IA notes that annual bonuses should only be paid out in "*exceptional circumstances*". The ISS mirrors this by noting that where companies imposed sacrifices on their workforce, similar sacrifices should be made by executives. GL emphasises the reputational risks companies could face where making poor pay decisions which do not indicate alignment between treatment of the workforce and executive directors.
- **Dividends.** Each of GL, ISS and the IA note that where dividends have been cancelled or suspended, that this should be reflected in executive pay.
- **LTIPs.** All proxy advisors are in agreement that adjustments to performance targets for inflight LTIPs or bonuses are to be discouraged.
- **Windfall gains.** Addressing the risk of windfall gains under executive share plans remains relevant where a share price remains impacted by the pandemic.
- **General workforce considerations.** The IA notes that remuneration committees should ensure executive remuneration is aligned with the approach taken for the general workforce. GL further highlights that where a company had to undertake significant layoffs, furloughs or cuts in workforce salaries, this should be addressed in the directors' remuneration report.

ESG performance metrics

IA. The IA strongly emphasises the need for companies to incorporate ESG performance targets into LTIP and bonus arrangements. In particular, the IA highlights that where companies have already incorporated the management of material ESG risks and opportunities into long-term strategy, committees should use these pre-identified ESG risks to develop performance conditions for variable remuneration.

ISS. ISS is similarly encouraging of ESG-related performance criteria, and provides examples of areas for companies to focus on, including consumer and product safety, environment and energy, labour standards and human rights, workplace and board diversity, and corporate political issues. ISS notes that there is no one size-fits-all approach and that the litmus test is whether the metric enhances shareholder value.

GL. Whilst GL generally encourages the use of ESG performance metrics, they urge investors to be wary, noting that the inclusion of ESG metrics in variable remuneration should be appropriate for each company's unique circumstances. GL highlights that certain ESG performance goals are longer term in their nature and are therefore more realistically suited to long term incentive plans, which are typically measured over a three year vesting period (e.g. reduction in carbon targets), whilst other ESG goals suit short term annual bonuses (e.g. social and human capital targets, like reducing the gender pay gap).

Each of the IA, ISS and GL emphasise the importance of fulsome disclosure of ESG metrics.

Remuneration reporting research

In May 2021, the FRC published a research report in conjunction with the University of Portsmouth focused on 'Changes in remuneration reporting following the UK Corporate Governance Code 2018'. The research examined the remuneration policy disclosures made by a sample of FTSE 350 companies during periods both before and after the introduction of the 2018 version of the Code. It also analysed shareholder voting on companies' revised remuneration policies and assessed the impact of the Code's new Principles and Provisions in this area. The report draws attention to where improvements in remuneration reporting need to take place.

4. CORPORATE GOVERNANCE REPORTING

In this part we cover FRC publications dealing with (i) areas of supervisory focus for 2022/2023 (ii) annual review of corporate governance reporting, (iii) key matters for 2021/2022 reports and accounts and (iv) workforce and wider stakeholder engagement, and section 172 reporting.

FRC areas of focus

In December 2021, the FRC announced its areas of supervisory focus for 2022/23, including priority sectors, thematic reviews and audit quality inspections. Priority sectors are: travel, hospitality and leisure; retail; construction and materials; and gas, water and multi-utilities. Six thematic reviews will be conducted in 2022 including one on TCFD reporting. Audit quality inspections will pay particular attention to auditor work in several areas including climate related risks and fraud risks.

FRC corporate governance reporting review

In November 2021, the FRC published its second annual review of corporate governance reporting. The review notes a general improvement in reporting against the Code compared with 2020 including on stakeholder engagement, audit and some areas of risk reporting. Generally, the FRC continues to encourage:

- Less boilerplate and declaratory statements with more focus on describing actions and outcomes of governance.
- Greater clarity as to how a company is applying the Code's Principles as well as clearer explanations where there are departures from Code Provisions. Examples of the FRC's expectations as to explanations for departures from the Code are set out, together with those Provisions of the Code where the FRC has detected "*undisclosed non-compliance*". The FRC also reminds companies of its 2021 publication:' Improving the quality of 'comply or explain' reporting'.

Particular areas where the FRC wishes to see improvement are set out in the next table.

The FRC also noted that during 2021 it undertook a pilot project in which it raised matters with a few companies on areas outside the FRC's current statutory enforcement remit, including stakeholder engagement.

FRC 2021 REVIEW OF CORPORATE GOVERNANCE REPORTING: *KEY AREAS FOR IMPROVEMENT*
Governance: Companies should pay greater attention to the alignment between reported good governance and company practices and policies, strategy and business models.
Purpose, values and strategy: Further improvements are needed in relation to the quality of disclosures of how purpose, values and strategy are connected.
Culture: Increased focus on assessing and monitoring culture by using different methods and metrics is still required. More companies need to take a more rigorous approach to culture and set up effective ways of monitoring and assessing both the culture itself and its alignment with purpose, values and strategy.
Stakeholder engagement: The FRC would like to see disclosure of genuine engagement with a wide spectrum of shareholders, not only the largest few, to understand and try to address their concerns as far as practicable. Shareholder concerns should be addressed 'formally and publicly and in a timely manner', including updating the IA's public register where relevant to the extent that there has been a significant vote against a board-proposed resolution.
Stakeholder-related decision-making: Reporting should draw out how the board oversees stakeholder decisions, including how, and on what basis, stakeholder information is passed to the board, as well as how often the board reviews engagement methods and identification of any issues discussed. The FRC also expects companies to report on the actual or intended outcomes of engagement and decisions on both the company's key stakeholders and the business, providing evidence to support statements when they are reporting on the performance of particular decisions. There should be a fair and honest assessment of the impact of engagement with stakeholders, including any areas where the company failed to meet targets.
Workforce engagement: Disclosures should be clear on how companies engage with their workforce, with outcomes of employee engagement illustrated in the annual report, alongside views and workforce concerns that ought to be taken on board. Feedback from management should also be provided on how issues have been dealt with.
Modern slavery and communities: Better quality disclosure on modern slavery and how companies are seeking to combat slavery in their supply chains is required. Companies should also provide more information and transparency on why the board approved any community initiatives or programmes, and how these align with strategy.
Diversity: Diversity policies to be described in full or a summary provided with a link to the full policy on the company's website to enable easy access.
Diversity: Those companies that use promoting and recruiting on merit as a justification for not actively pursuing diversity policies should demonstrate how their approach brings about diversity in the boardroom and workforce.
Succession planning: Better reporting is needed of succession planning, and how this links to assuring the make-up of the board and delivering diverse challenge.
Risk management and internal control: The FRC wants to see an increased focus on assessing and ensuring the effectiveness of risk management and internal control systems with disclosures which clearly demonstrate the way in which a company identifies, monitors and mitigates risks.
Risk appetite: Clear explanations are required of the process by which the board determines a company's risk appetite and the risk appetite for each of the company's principal risks.
Remuneration: Companies should explain how chosen performance metrics support the company's strategic objectives, how each are linked to the successful delivery of long-term strategy, and how they promote long-term sustainable success.
Remuneration: Better explanation is required of how executive remuneration is aligned to a company’s purpose, values and strategy. A company should be clear about engagement with its shareholders and workforce on remuneration, and its impact on remuneration policy and outcomes.
Remuneration: Companies should state whether or not the remuneration committee has used its discretionary powers in determining final remuneration outcomes, and clearly explain the reason for doing so, or not, as the case may be.

FRC key matters for reports and accounts in 2021/2022. In October 2021, the FRC published its 'Key matters for 2021/22 reports and accounts'. It is primarily targeted at CEOs, CFOs and Audit Committee chairs but likely to be helpful for all preparers, reviewers and auditors. It replaces the annual year-end advice letter and highlights key messages, FRC publications and recent changes to corporate governance and narrative and financial reporting.

This letter is customarily preceded by the FRC's annual review of corporate reporting (note, this is a different report from the review of corporate governance reporting discussed above). The most recent annual review was published in October 2021 along with a highlights document.

All three documents show areas that are likely to be monitored closely by the FRC in 2022 and so act as a warning to companies of areas to consider carefully. Whilst many aspects concern financial statements and are beyond the scope of this update, some key general narrative reporting aspects are set out in the table below.

FRC KEY MATTERS FOR REPORTS AND ACCOUNTS 2021/2022: *KEY POINTS*	
General	The FRC notes that its routine monitoring of annual reports and accounts during the 2021/22 cycle will continue to focus on: climate-related risks, including the new disclosures required for premium listed companies; and judgements and estimation uncertainty in the face of the continuing economic and social impact of COVID-19.
Strategic report	The strategic report should address the positive and negative aspects of the company's development, performance, position and future prospects openly, and without bias. Companies should highlight and explain linkages between information presented in the strategic report and the annual report and accounts more broadly. The FRC continues to note examples of material items not discussed in strategic reports, often relating to balance sheet items or cash flows.
COVID-19	The FRC continues to focus on the disclosure of judgements and estimation uncertainties arising from the continuing effects of COVID-19, particularly regarding matters such as going concern and liquidity.
Climate change	Although noting some improvements in related narrative disclosures, including better explanations of net zero commitments and scenarios used in some cases, the FRC considers there is still considerable scope for further enhancement.
Streamlined energy and carbon reporting	Whilst minimum statutory requirements are generally met, more needs to be done to make these disclosures understandable and relevant for users, including explaining the methodologies used and the extent of any third-party assurance received. The FRC was pleased to see some examples of emerging good practice, including disclosure of Scope 3 emissions and information about emissions-reduction targets, 'net zero' strategies, or other emissions reduction commitments.
Viability and going concern	Disclosure of inputs and assumptions used to support viability and going concern assessments often lacked sufficient qualitative and quantitative detail. In some cases, there was evidence indicating that significant judgements may have been applied in these assessments, but they were neither identified nor explained. As well as providing more detailed disclosure in these areas, the FRC encourages companies to extend the period over which they assess viability, and provide longer-term information where possible. In September 2021, the FRC published a Thematic Review focused on viability and going concern reporting.
Alternative Performance Measures	The use and presentation of Alternative Performance Measures remains an area of focus. The FRC has issued another reminder that companies should do more to ensure that APMs are not given more prominence or authority than statutory measures, by focusing more on the discussion of IFRS measures and avoiding descriptions of APMs that imply they are more useful or reliable than their IFRS equivalents. (In October 2021, the FRC published a Thematic Report which develops these issues further).
Distributable profits	On the lawfulness of distributions, issues which continue to be raised include whether dividends received from company subsidiaries meet the criteria for qualifying consideration when determining the realised profits and distributable reserves of the parent company and whether audited accounts support dividends and distributions. (NB – the same considerations also apply to the need for distributable profits at holding company level for (i) share buybacks and (ii) employee share schemes.)

Workforce and wider stakeholder engagement, and section 172 reporting.

As noted above, workforce and stakeholder engagement and section 172 reporting will remain key areas of focus in 2022.

In May 2021, the FRC published 'Workforce Engagement and the UK Corporate Governance Code: A Review of Company Reporting and Practice'. It presents the findings of research conducted on workforce engagement practices of, and reporting by, FTSE 350 companies and specifically the recommendation for boards to ensure effective workforce engagement under the UK Corporate Governance Code 2018. The research contains case studies describing differing approaches and elements of good practice. (For more detail see Ashurst Governance and Compliance update, Issue 1.)

In July 2021, the FR Lab published Reporting on stakeholders, decisions and Section 172. The report highlights that information on stakeholders and on decisions can help investors understand how a company is progressing in fulfilling its stated corporate purpose and achieving long-term success. The FR Lab believes that section 172 statements can then be a helpful bridge between the two types of information.

REPORTING ON STAKEHOLDERS, DECISIONS AND SECTION 172: *KEY AREAS*	
Key stakeholders	Investors view information on a company's key stakeholders as critical to understanding the company and its prospects. As such, investors want to see information on stakeholders' relevance to the business model and strategy, the strength of stakeholder relationships, related risks and opportunities, and performance and metrics – i.e. what is measured and how it is assessed.
Decisions and decision-making	Investors want to know what the strategic decisions were during the period and how such decisions were made, including how stakeholders were considered in reaching them, the difficulties encountered, and the outcomes of these decisions.
"Better" section 172 statements	Statements are not just about stakeholder engagement, but should reflect all aspects of the Section 172 duty to allow a better understanding of how a company is progressing in its pursuit of its purpose and long-term success.

Each section of the report includes examples reflecting ways of addressing some aspects of reporting highlighted by investors. The first two sections of the report also include questions for companies to consider. The final section builds on the tips on approaching Section 172 statements published by the Lab in October 2020.

5. DIVERSITY REPORTING –

Diversity in its broadest sense continued to attract focus and momentum in 2021. In this section, we summarise the key areas of focus as regards (i) gender diversity reporting, (ii) ethnicity reporting and (iii) FCA proposals for a significant boosting of regulation in this area. (See also the points on diversity in the table in section B 4 of this briefing on the FRC Review of Corporate Governance Reporting; and note also the FR Lab July 2021 report on 'Board Diversity and Effectiveness in FTSE 350 Companies').

Gender diversity reporting

In February 2021, the Hampton-Alexander Review published its fifth and final report on improving gender balance in FTSE leadership. Amongst other things the report considers that:

- There should be a successor review body that proposes a 40 per cent target for women on boards. The FTSE Women Leaders Review, a new five-year review, was launched by the Government in November 2021 but has yet to announce its leadership or targets.
- As best practice, companies should have a woman in at least one of the four senior board roles: Chair, SID, CEO or CFO.
- Companies should publish a gender pay gap for their board and executive committee.

More recent statistics on female representation can be found in the November 2021 report of Cranfield University and in the December 2021 Spencer Stuart Board Index. For example, the Cranfield report states that 21 per cent of FTSE 100 boards and 32 per cent of FTSE 250 boards have yet to reach the Hampton-Alexander target of 33 per cent women on boards.

Ethnicity reporting

As at 12 March 2021, the Parker Review stated that 81 FTSE 100 companies had ethnic minority representation on their boards. The PLC WM 2021 review (November 2021) noted that 123 FTSE 350 companies (70 FTSE 100 and 53 FTSE 250) disclosed in their annual report that their board comprises at least one director of colour. By way of reminder, the Parker Review set a target of one board director of colour for the FTSE 100 by 2021 and for the FTSE 250 by 2024.

FCA consultation on diversity and inclusion on company boards and committees

In July 2021, the FCA published a consultation paper, CP21/24, which proposes significant changes to the FCA Listing Rules, as well as changes to the Disclosure Guidance and Transparency Rules, on board and senior management diversity. The consultation is now closed and the FCA response is awaited.

For the Listing Rules, the FRC is proposing a 'comply or explain statement' on whether relevant companies have achieved proposed targets for gender and ethnic minority representation on their boards, and as part of the same annual disclosure, data on the make-up of their board and most senior level of executive management as regards gender and ethnicity. See the table for key aspects of the proposals.

FCA PROPOSALS FOR NEW LISTING RULES ON DIVERSITY AND INCLUSION: *KEY ASPECTS*	
Who?	UK and overseas companies with equity shares, or certificates representing equity shares, admitted to the premium or standard segment of the FCA's Official List. Open-ended investment companies, shell companies, companies with listed debt securities and securitised derivatives and AIM companies would **not** be caught.
What?	Companies in scope should disclose in their AFR whether they meet specific board diversity targets on a 'comply or explain' basis (indicating any targets they have not met and explaining the reasons for not having met them). The proposed targets are: • At least 40% of the board should be women (including those self-identifying as women). • At least one of the senior board positions (Chair, Chief Executive Officer, Senior Independent Director or Chief Financial Officer) should be held by a woman (including those self-identifying as a woman). • At least one member of the board should be from a non-white ethnic minority background (as referenced in categories recommended by the Office for National Statistics). Alongside these disclosure, companies should publish, in a standardised table format, data on the composition of their board and the most senior level of executive management by gender and ethnicity, as at a specified date. The FCA is also consulting on whether or not to require disclosure of data on representation by sexual orientation at these levels, and/or whether to extend diversity data reporting to capture one-level below executive-level management. There is a variety of guidance proposed for additional disclosures that companies may choose to make to provide further context such as: • A brief summary of any key policies, procedures and processes, and any wider context, that it considers contributes to improving the diversity of its board and executive management. • Any mitigating circumstances which make achieving board diversity more challenging, such as the size of the board or the country in which its main operations are located. • Any risks it foresees to its meeting or continuing to meet the FCA's board diversity targets in the next accounting period, or any plans to improve board diversity.
When?	The consultation is closed, feedback is still awaited and the initial timing has slipped, with the FCA saying that it will seek to make relevant rules by early 2022.
Which Rules?	New LRs 9.8.6R (9) and 14.3.27R(1) as regards new narrative reporting disclosures. New LRs 9.8.6R(10) and 14.3.27R(2) as regards the new data tables.

As regards its DTRs proposals, the FCA proposes to amend existing DTR 7.2.8AR to encourage considerations of broader diversity aspects within diversity policies and related disclosures by companies in their AFRs. See the table below for the key aspects of the DTRs proposals.

FCA PROPOSALS FOR DTRS ON DIVERSITY: *KEY ASPECTS*	
Who?	The existing scope of DTR 7.2.8AR would be maintained, broadly certain UK and overseas listed companies admitted to UK regulated markets and, as currently under this rule, small and medium-sized companies would be excluded.
What?	Companies in scope should: • Augment existing DTR disclosures as regards board diversity policies to describe how they apply to the board's key committees, specifically the audit, remuneration and nomination committees. • Consider diversity policy more broadly, for example including considerations of ethnicity, sexual orientation, disability, or lower socio-economic background, in addition to the aspects of diversity already referred to in the rule. Guidance would also encourage companies to add numerical data on the diversity of members of the board and its committees when discharging their existing obligation to describe the results of their diversity policy during the reporting period.
When?	As above.
Which Rules?	Additions to existing DTR 7.2.8AR.

6. OTHER REPORTING DEVELOPMENTS

Structured electronic reporting

Having been delayed by a year, the requirements (DTR 4.1.14R) for listed issuers to produce their consolidated annual financial reports (i.e. those required for listed companies by FCA rules and not UK 2006 Act statutory accounts) in machine-readable (XHTML) format and to tag basic information in accordance with a taxonomy apply in relation to financial periods beginning on or after 1 January 2021, with the requirement for the tagging of notes applying for financial years starting on or after 1 January 2022. The detail of the requirements is beyond the scope of this update, nevertheless during the year there have been numerous publications and updates of which in-scope reporters should be aware.

STRUCTURED ELECTRONIC REPORTING: *GUIDANCE*	
FR Lab list of resources, September 2021	This lists a variety of ESEF-related resources. Also, in September 2021 the FR Lab published a survey of early adopters and in October 2021, it followed the survey with an early implementation study which looked at 50 early structured reports from across the UK and Europe.
FRC and FCA joint letter, November 2021	The letter to CEOs, Chairs, and CFOs of relevant companies reminded them of their obligations and set out expectations as to the quality of reporting.
FRC Primary Market Bulletin No 37, December 2021	Part of the bulletin reminds in scope issuers that they will need to devote further and continuing management and operational resource to ensure that they will be able to submit AFRs in the required format.
FCA changes, December 2021 and webpage	The FCA published changes to its Handbook to clarify which taxonomies issuers can use to tag their AFRs this year. Its Handbook Notice (No.94) also clarified those which may be used in relation to financial periods beginning on or after 1 January 2022. The FCA also has a webpage on Filing of ESEF AFRs that it regularly updates.

DTR 6.3.5 (use of unedited full text for announcements)

As mentioned earlier, in December 2021, the FCA issued its feedback statement and final rules following its Primary Markets Effectiveness Review(CP 21/21).

Amongst changes, DTR 6.3.5 has been amended to provide that an issuer or person who discloses regulated information is exempt from the requirement to communicate it to the media in unedited full text if: (a) the regulated information in unedited full text has been filed with the FCA by uploading it to the national storage mechanism; (b) the regulated information has been communicated to the media; and (c) the communication contains a statement that the regulated information is available in unedited full text on the national storage mechanism.

Where the above exemption applies, the announcement relating to the publication of certain regulated information, namely announcements to make public annual financial reports, half yearly financial reports and reports on payments to governments, must also include an indication of the website on which the relevant documents are available.

In conjunction with the above, the previous requirement that certain information (broadly that which would be required to be disseminated in a half-yearly financial report) needed to be published in unedited full text in AFR RIS announcements has also been removed.

This helpful change removes the complex and unnecessary full text disclosure requirement for the above mentioned RIS announcements to the extent that the conditions above are satisfied.

International Sustainability Standards Board

We reported in last season's briefing on growing calls for global sustainability standards to facilitate clear, consistent and comparable sustainability disclosures and on the consultation paper on sustainability reporting issued by the International Financial Reporting Standards Foundation Trustees. The consultation period ended on 31 December 2020.

In February 2021, the Trustees issued a press release noting that feedback received indicated that there is a need for a global set of internationally recognised sustainability reporting standards.

Since then, in November 2021, the Trustees announced the creation of the new standard-setting board—the International Sustainability Standards Board (ISSB). A chairman has been appointed and a vice-chair and members are being sought.

Showing progress towards reducing fragmentation in this area, the Trustees also announced that two other bodies working in this space would join the ISSB by June 2022. These are (i) the Climate Disclosure Standards Board (CDSB) and (ii) the Value Reporting Foundation (VRF) (the VRF was itself the result of a combination, in 2021, between the International Integrated Reporting Council and the Sustainability Accounting Standards Board).

The intention is for the ISSB to deliver a comprehensive global baseline of sustainability-related disclosure standards that provide investors and other capital market participants with information about companies' sustainability-related risks and opportunities to help them make informed decisions.

To this end, the Technical Readiness Working Group (TRWG)(comprised of, amongst others, the TCFD, IFRS, CDSB and VRF and with the aim of allowing the ISSB to have a running start) produced two protype standards for the new ISSB to consider on (i) general requirements for disclosure and (ii) climate-related disclosures.

Once the ISSB is up and running, it will consider these protypes as part of its initial work programme. It will hold public consultations to inform the ISSB's work plan and on proposals informed by recommendations from the TRWG. Following these consultations, the ISSB's work will follow the IFRS Foundation's rigorous due process, including public discussions by the ISSB of feedback received to the consultations and possible improvements to the proposals prior to their finalisation as standards.

Annual modern slavery reporting

As mentioned in our 2021 season briefing, after a long consultation period, the Government confirmed in 2020 that it will be bringing forward reforms to the transparency reports employers have to publish under the Modern Slavery Act. However, it remains yet to do so. Among other things, those aspects of a modern slavery statement that are currently voluntary will become mandatory and there will be a single new

reporting deadline. More information about the proposed changes is contained in our briefing here.

We still do not yet know when these reforms will take effect as the Government has said only that it will bring forward the necessary legislation "*when parliamentary time allows*". Nevertheless, organisations would be well advised to plan ahead and consider what systems and processes they will need to put in place to ensure they are able to comply with the new requirements when the time comes.

The government portal for filing modern slavery statements was set up in March 2021.

Annual gender pay reporting

Private and voluntary sector employers with 250 or more employees have to publish data on their gender pay gap by 4 April each year. In 2021 this deadline was pushed back by six months to 4 October 2021 due to the continued effects of the pandemic, although employers were encouraged to report by the original deadline if possible. As things currently stand, a gender pay gap report will need to be published in April 2022. The Government is also due to review the gender pay regulations by April 2022 and publish a report on its conclusions as to whether they meet the government's policy objectives. For more on other employment issues for 2022, see our briefing –Top Employment Issues For 2022.

Appendix - The UK Corporate Governance Environment in 2022 (a non-exhaustive list of publications (with links), which may be useful during the 2022 AGM and reporting season)**.**

Title	Date
The Department for Business, Energy and Industrial Strategy	
The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022	17/22
FTSE Women Leaders Review	11/21
Consultation response: Mandatory climate-related financial disclosures by publicly quoted companies, large private companies, and LLPs	10/21
Greening Finance: a Roadmap to Sustainable Investing	10/21
Financial Conduct Authority	
PS 21/23 Enhancing climate-related disclosures by standard listed companies	12/21
Primary Market Bulletin No 36	12/21
Consultation on new Technical Note - TCFD aligned climate-related disclosure requirements for listed companies	11/21
Proposals to boost diversity disclosure on listed company boards and executive committees	7/21
FCA and FRC joint statement on continued financial reporting publication extensions	1/21
Financial Reporting Council and FR Lab	
Areas of supervisory focus for 2022/23	12/21
Annual Review of Corporate Governance Reporting	11/21
Key matters for 2021/2022 reports and accounts	10/21
Annual review of corporate reporting 2020/21 and highlights document	10/21
Thematic Review – Alternative Performance Measures	10/21
Climate scenario analysis: current practice and disclosure trends	10/21
Thematic Review – Viability and Going Concern	9/21
Reporting on stakeholders, decisions and Section 172	7/21
FRC Statement of Intent on Environmental, Social and Governance challenges	7/21
Improving the Quality of Comply or Explain Reporting	2/21
All latest FRC and FR Lab publications	
Investment Association	
IA Principles of Remuneration	11/21
Investors Call for Continued Restrain on Executive Pay and Bonuses in the Year Ahead	11/21
Voting guidelines	
ISS UK and Ireland Proxy Voting Guidelines and Benchmark Policy Changes document	12/21
GL 2022 Policy Guidelines	12/21

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