



Governance Briefing

CORPORATE GOVERNANCE COMMITTEE (13 12 2021)

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Date	6 December 2021

For Information:

Updates on UK, US, EU and other international developments.

This paper provides an update on publications since the last Corporate Governance Committee meeting on 27 September 2021.

Corporate Governance

Women on boards: BEIS statement in relation to The FTSE Women Leaders Review

On 1 November 2021, **BEIS announced** that the government will support a new five-year independent review to monitor the representation of women among leaders of FTSE 350 companies, focusing not just on board membership but also on senior leadership roles. The FTSE Women Leaders Review follows on from the Hampton-Alexander Review, which published its final report in February 2021, and before it the Davies Review. New leadership will be appointed to steer the Review and take forward new targets. The next annual report on gender diversity will be published in February 2022.

Glass Lewis 2022 Policy Guidelines

On 16 November 2021, **Glass Lewis published** its 2022 proxy voting policy guidelines for the UK.

The 2021 guidelines have been amended to include the following;

- Diversity of Ethnicity and National Origin at Board Level.
- The Role of a Committee Chair.
- Remuneration Committee Performance and Accountability.
- Environmental and Social Risk Oversight.

In addition, Glass Lewis has amended the 2021 guidelines to clarify:

- Its approach to ESG.
- Its approach to analysing shareholder proposals.
- Its guidance on the use of environmental and social metrics in the variable incentive programmes for executive directors.
- That its assessment of board-level gender diversity is based on the self-identification of directors.

- Its approach and expectations when assessing equity incentives granted to executives that are directly or indirectly major shareholders of a company.

Executive remuneration: Investment Association principles of remuneration for 2022

On 18 November 2021, **the Investment Association published** a revised version of its principles of remuneration for 2022. The main changes from the 2021 version are clarified sections on pensions, environmental, social and governance (ESG) performance measures and a new section on value creation plans.

Corporate governance: FRC 2021 annual review of corporate governance reporting

On 25 November 2021, the **FRC published** its annual review of corporate governance assessing the quality of reporting against the UK Corporate Governance Code.

Recommendations include:

- Code compliance. Companies should improve the transparency of non-compliance reporting and provide more informative explanations. Departures should be made clear by naming the Provision(s) in the compliance statement, followed by an explanation (or signposting to an explanation).
- Purpose and culture. Companies should demonstrate further improvements in the quality of disclosures of how purpose, values and strategy are connected. Greater attention should be given to linking different culture-related initiatives across the organisation, disclosing how stakeholder feedback influenced board decision and reviewing culture cyclically and consistently.
- Succession planning. Improvement is still required in succession planning reporting, and on how this links to assuring the make-up and diversity of the board.
- Diversity. Companies should improve explanations of their diversity policies with objectives and targets and demonstrating their connection to company strategy. Diversity policies should either be explained in full in the annual report or summarised with a link to the full document.
- Stakeholder engagement. Companies should report on the actual or intended outcomes of engagement on both the company's key stakeholders and the business. Supporting evidence should be provided when reporting on the performance of particular decisions. The information provided should be a fair and honest assessment of the company's performance in relation to stakeholder engagement, including the identification of any areas where targets were not met.
- Modern slavery. The quality of reporting on modern slavery is concerningly poor. Companies should build trust with investors and wider stakeholders by explaining how they are combatting modern slavery in their supply chains.
- Remuneration. Better explanations should be provided of how executive remuneration is aligned to a company's purpose, values and strategy. Companies should state whether the remuneration committee has used its discretionary powers in determining final remuneration outcomes, and clearly explain the reasoning for this. In relation to LTIPs, the annual report should explain how the chosen performance metrics support the company's strategic objectives, are linked to the successful delivery of long-term strategy and promote long-term sustainable success.
- Audit and risk. Reporting on the tenure and tendering of external audit requires improvement. There should also be increased focus on assessing and ensuring the effectiveness of the risk management and internal control systems.

Sustainability

FCA adaptation report (corporate aspects)

On 28 October 2021 the **FCA published a report** setting out its assessment of how the financial services industry and listed companies are adapting to climate change.

Among other matters, the FCA:

- States that it proposes to embed climate considerations, including net zero, across all its functions, promote net zero directly through dedicated policy proposals, and consider net zero in all other policy proposals.
- Notes that listed companies face challenges around making and meeting net zero commitments, in relation to data and information; targets, metrics and methodologies; the impact on business relationships; the interaction with public policy; and divestment versus stewardship.
- Sets out principles for net zero commitments for listed companies to consider; briefly that commitments and targets should be appropriate to companies' business models, supported by suitable resourcing and governance arrangements; commitments and targets should be realistic and feasible; and companies should set targets to measure progress against commitments.
- Notes that its work on TCFD-aligned disclosure requirements for listed companies interacts closely with similar obligations that BEIS has proposed introducing in the Companies Act 2006. The FCA considers that, while there is some overlap with in-scope companies, the two regimes can work effectively together.

FCA strategy for ESG priorities

On 3 November 2021, the **FCA published its strategy for its ESG priorities**.

In the strategy, the FCA sets out how it intends to deliver on the target ESG-related outcomes included in its Business Plan for 2021/22. It has based its strategy on five core themes:

- **Transparency.** This involves the promotion of transparency on climate change and wider sustainability along the value chain.
- **Trust.** This involves building trust and integrity in ESG-labelled instruments, products and the supporting ecosystem.
- **Tools.** This involves the FCA working with others to enhance industry capabilities and support firms' management of climate-related and wider sustainability risks, opportunities and impacts.
- **Transition.** This involves supporting the role of finance in delivering a market-led transition to a more sustainable economy.
- **Team.** This involves developing strategies, organisational structures, resources and tools to support the integration of ESG into FCA activities.

For each of these themes, the FCA provides details of the key actions it is currently undertaking or intends to undertake in the near future.

The strategy also contains the core principles that the FCA has used to identify its themes and its near-term priorities and an overview of how it has delivered against the priorities set out in its October 2019 feedback statement (FS19/6) on climate change and green finance.

The FCA will provide interim updates on the progress of the ESG strategy in its business plan and annual report in 2022 and publish a more detailed stock-take on progress in 2023.

Auditing

Proposed Revisions to the Audit Firm Governance Code

The consultation period for the FRC's revisions to the AFGC closed on 18 November and ICAEW's response is included as paper 7.3. We recognised that the revision of the code was an important part of actions to restore trust in audit. However, we felt that the 2022 proposed revisions to the Code lack clarity, are excessively prescriptive and extend beyond the original purpose of the Code. We urged the FRC to address these concerns and present any changes within a compelling, cohesive package that enhances audit committee and investor engagement.

Our conclusions on the consultation were set out in an Insights article [ICAEW calls for FRC to rethink changes to Audit Firm Governance](#).

Reporting

New sustainability standards board targets globally comparable reporting

Moves to provide global financial markets with high-quality disclosures on climate and other sustainability issues moved a step forward after the IFRS Foundation [formally announced the formation of the International Sustainability Standards Board](#), with a pledge for operations to begin in early 2022 and published prototype disclosure requirements.

The International Sustainability Standards Board (ISSB) will develop IFRS Sustainability Disclosure Standards providing a comprehensive global baseline of high-quality sustainability disclosures to meet investors' information needs. The new board will also bring together the Climate Disclosure Standards Board (CDSB) and the Value Reporting Foundation (VRF), the name behind the Integrated Reporting Framework and the SASB Standards, by June 2022.

Capital Markets

FCA policy statement and final rules (corporate aspects)

On 26 November 2021, the [FCA published a policy statement](#) on proposed changes to its approach to decision making.

The policy statement summarises the feedback received to CP21/25, in which the FCA consulted, among other things, on amending its Enforcement Guide to transfer general decisions on commencing civil or criminal proceedings under FSMA from its Regulatory Decisions Committee to Executive Procedures.

The policy statement confirms that, after carefully considering the feedback received, the FCA has decided to proceed with its proposals as consulted on. The FCA has also published the Changes to Decision Making for Statutory Notice Procedure Instrument 2021, which amends the Enforcement Guide (EG) and Decision Procedure and Penalties manual (DEPP) to implement the proposed changes. The instrument comes into force with immediate effect.

EU Capital Markets Union: European Commission adopts package of legislative proposals for a European single access point

On 25 November 2021, [the European Commission published a proposal](#) for a Regulation to establish a European Single Access Point (ESAP), providing centralised digital access to public financial and sustainability-related information about EU companies and investment products.

The proposed legislative package will be sent to the European Parliament and the Council of the EU for discussion and, if appropriate, adoption under the ordinary legislative procedure.

EU Capital Markets Union: Commission consultation on proposed listing act

On 19 November 2021, the [European Commission published a consultation](#) document seeking general views on a proposed listing act to make public capital markets more attractive for EU companies and to facilitate access to capital markets for SMEs.

Simplifying the listing rules for public markets, so as to promote and diversify small and innovative companies' access to funding is the second action in the Commission's new action plan on the capital markets union. The deadline for responding is 11 February 2022.

Climate-related disclosures: FCA Primary Market Bulletin No 36

On 15 November 2021, [the FCA published Primary Market Bulletin No 36](#) which sets out information on the FCA's disclosure expectations and supervisory strategy in relation to the TCFD aligned climate-related disclosure requirements for premium listed commercial companies in LR 9.8.6R(8) and, subject to the making of final rules, for certain standard listed companies in the proposed new LR 14.3.27R.

The FCA is responsible for monitoring and enforcing compliance with the Listing Rules requirements. The Financial Reporting Council is responsible for keeping the disclosures under review. The Bulletin sets out a number of other matters in relation to the related supervisory strategy, including that the review of TCFD-aligned disclosures will be embedded into the FRC's routine reviews of annual financial reports; the FCA's intention to collaborate with the FRC on thematic work to assess compliance, identify areas of concern and disseminate examples of best practice; the likely stages of regulatory intervention; and the FCA's approach where an annual financial report does not contain a TCFD-related statement.

Tax

Finance Bill 2022: publication (corporate aspects)

On 4 November 2021, [HM Treasury and HMRC published the Finance Bill 2022](#), which includes measures to tackle the promoters of tax avoidance. Clause 84 sets out the new power enabling HMRC to present a winding-up petition in respect of a person carrying on business as a promoter, which was in clause 4 of the draft legislation, with additional procedural information.

Clause 84 will come into effect on the date of Royal Assent of the Finance Bill 2022.