FCA Policy Statement: improving climate-related disclosures by UK listed companies and clarification of existing climate-related disclosure obligations

08 January 2021

Recent changes introduced by the Financial Conduct Authority (FCA)

On 21 December 2020, as we broke for Christmas, the FCA published new Listing Rule 9.8.6R(8) (LR) and guidance requiring commercial companies with a UK premium listing to include a compliance statement in their annual financial report, stating whether they have made disclosures consistent with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD) or, if they have not done so, a requirement to: (1) explain why they have failed to do so; and (2) outline any steps they are taking, or are planning to take, to enable them to make consistent disclosures in the future, including anticipated timings.

At the same time, the FCA also published a Technical Note clarifying existing ESG disclosure obligations for a wider scope of issuers.

Background

There is no doubt that COVID-19 and its impacts are forcing society and governments around the world to reassess their priorities. Society more than ever values ESG and, as we exit from the global pandemic, there is growing pressure on governments to put ESG matters at the centre of economic and social policy in order to address some of the fundamental issues that we face: building a stronger economy that ensures long term health and wellbeing for all, job creation and a more resilient and inclusive society.

Resolving the climate crisis is also a high priority. At the current time, 126 governments have committed to net zero by 2050 including, crucially, China, Japan and South Korea. Positive change on this front also looks likely in the U.S. under Biden's leadership. To help deliver net zero, governments are implementing significant green stimulus measures which will inevitably include changes to law and regulation and all in short order. In the UK, policy-makers, regulators, industry, investors and wider society recognise the urgent need for change to resolve the climate crisis. Accordingly, there is a drive for greater ESG adherence and disclosure from UK listed companies to inform investors, protect climate-related interests of consumers and clients and support competition on ESG aspects.

The TCFD was established by the Financial Stability Board in 2015 and published its final report in June 2017 (Recommendations and Recommended Disclosures). The report sets out 11 recommended disclosures under four pillars (governance, strategy, risk management and metrics and targets) to promote better disclosure on climate-related matters.

The UK Government was one of the first to publicly endorse the TCFD's recommendations and made their implementation a central part of its 2019 Green Finance Strategy. Amongst many other initiatives, in November 2020 a cross-Whitehall/cross-regulator taskforce published a Roadmap which sets out a path towards the introduction in the UK over the next five years of disclosures against the TCFD.

New Listing Rule 9.8.6R(8) and associated guidance

LR 9.8.6R(8) requires all commercial companies (but not investment funds) with a UK premium listing (including sovereign controlled commercial companies) to include a statement in their annual financial report setting out:

- whether they have made climate-related disclosures consistent with the TCFD Recommendations and Recommended Disclosures;
- where they have not done so, an explanation of which recommendations and/or disclosures have not been included and why not, together with a description of any steps that are being taken or are planned so that those disclosures can be made in the future – including relevant timeframes for making those disclosures;
- where they have included some, or all, of their disclosures in a document other than their annual financial report, a description of that document and where it can be found together with an explanation of why; and
- where in their annual financial report (or other relevant document) the various climate-related disclosures can be found.

LR 9.8.6R(8) takes effect for accounting periods beginning on, or after, 1 January 2021. The Listing Rule is accompanied by new guidance (LR 9.8.6B G to 9.8.6D G (inclusive)) to help listed companies determine whether the disclosure is consistent with the TCFD's Recommendations and Recommended Disclosures. In addition, LR 9.8.6E G confirms that the FCA ordinarily expects companies to be able to make appropriate climate-related disclosures except in those limited circumstances where the issuer faces transitional challenges in obtaining appropriate data or embedding relevant modelling or analytical capabilities.

Technical Note

The need to make ESG disclosures is not new. Existing disclosure obligations may already require listed issuers, issuers with securities admitted to trading on regulated markets and other entities to disclose ESG risks that are financially material or in certain other circumstances. These disclosure obligations may arise under the LR, Disclosure Guidance and Transparency Rules (DTRs), the Market Abuse Regulation (MAR) and the Prospectus Regulation (PR). However, the FCA received feedback that those subject to these disclosure obligations required greater clarity from the FCA on the circumstances which would give rise to the requirement to make ESG related disclosures. The Technical Note, therefore, outlines a non-exhaustive list of existing disclosure requirements which could require issuers to disclose ESG matters. These include:

- Listing Rule Principle 1 and LR 7.2.2G which require listed companies to take reasonable steps to establish and maintain adequate procedures, systems and controls to timely and accurately disclose information to the market;
- LR 9.8.6R(5) which requires premium listed issuers to include a statement in its financial report outlining how the company has applied the UK Corporate Governance Code 2018 (CGC) principles (which include responsibilities to wider society and consideration of ESG matters at board level); and the new LR 9.8.6R(8) described earlier;
- LR 1.3.3R which requires that issuers take reasonable care to disclose information that is not misleading, false or deceptive and should not omit anything which would affect the import of such information; the content requirements of circulars in LR 13 for premium listed companies; and PR requirements which necessitate the inclusion in a prospectus of all necessary information (Article 6 and 14 PR, specifically in risk factors and various annexes), all of which should include consideration of ESG related matters;
- ongoing disclosure requirements in the DTRs including those requiring information that investors need to be able to assess the prospects and risks of a company in the context of the UK Government's net zero target and the requirement of a CGC statement in the directors' report; and
- MAR disclosure requirements for inside information which may include ESG-related matters.

The Technical Note does not provide a definition of ESG matters. Nor does it provide examples which might have been useful to help issuers and others determine the materiality of the ESG information for disclosure purposes. As a consequence, those caught by the disclosure obligations must consider the particular facts of their business when assessing the materiality of the ESG information for disclosure purposes.

Points to note

The FCA plans to issue a follow-up consultation by mid-2021 on the extension of TCFD aligned disclosures to: (1) a wider scope of listed issuers – the proposal is likely to see those companies with a standard listing on London caught by LR9.8.6R(8); and (2) UK-authorised asset managers, life insurers and FCA-regulated pension schemes including, potentially, to require listed asset managers and insurance companies with asset management businesses to make client-focussed climate disclosures as well as shareholder-focussed disclosures.

In addition, BEIS plans to consult in early 2021 on proposed climate-related disclosure obligations for certain UK-registered companies (large private companies have been mentioned as possibly being subject to the new climate-related disclosure obligations).

The outcomes of the new Listing Rule are to be monitored by the FCA in evidencing the extent to which the market rewards companies which are effectively managing the transition to net zero. The wider FCA intention is to deepen the application and strength of ESG disclosure requirements in the long term and pave the way to eventual international standards for corporate reporting on climate-related and sustainability matters within financial reporting.

Next steps

The first climate-related disclosures against the TCFD requirements will be available in annual reports published in 2022. Whilst companies have a while to prepare for the required disclosures, meaningful compliance with the new Listing Rule requires planning now on how to use the TCFD framework and how best to measure and model climate risks and opportunities in their businesses today and in different future climate scenarios.

Issuers should consider the adequacy of their reporting procedures to make sure that they enable the issuer to identify material ESG risks as, and when, they arise and for disclosure of those risks to be made when appropriate.

Sponsors also need to be aware of the new Listing Rule as it will impact on their duties and responsibilities. Sponsors are required by LR 8.2 and LR 8.4 to consider whether companies have established procedures which enable them to comply with the Listing Rules, which now include the new climate-related disclosure requirements. Given that this is a specialist area, sponsors may wish to engage third party experts to assist them with their due diligence.

If you have any queries in relation to the new climate-related disclosure requirements or the wider ESG disclosure obligations, please do get in touch with one of the listed contacts or your usual contact at Hogan Lovells.

Resources:

FCA Policy Statement (PS 20/17) and Technical Note

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