FCA publishes new rules to promote shareholder engagement

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By: Michael McKee | Chris Whittaker | Marina Troullinou

In brief...

On 31 May 2019, the Financial Conduct Authority (FCA) published policy statement (PS19/13) setting out new rules which aim to improve shareholder engagement from life insurers and asset managers. The policy statement provides feedback to the relevant Consultation Paper (CP19/7) and implements the requirements which were introduced by the revised Shareholder Rights Directive (SRDII).

Background and objectives

The objective of the SRDII is to enhance shareholder engagement, promote long-term investment decision-making and improve transparency around companies’ ownership structures. To this end, it requires transparency of engagement policies and investment strategies and imposes disclosure and approval obligations with regard to certain transactions with related parties. The new rules will affect regulated life insurers, asset managers and companies with shares admitted to trading on a regulated market.

Rules for asset managers and life insurers

Asset managers and asset owners will be required to disclose certain information relating to their engagement policies and investment strategies. More specifically:

- Life insurers and asset managers will need to publish their engagement policy as well as information on how this has been implemented, unless they can publicly explain the reasons for not doing so.
- Life insurers must disclose information on their arrangements with asset managers on an annual basis. They must also explain how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities and demonstrate how the relevant elements promote the medium to long-term performance of their assets.
- Asset managers must share information with asset owners, including on how their investment strategies contribute to the medium to long-term performance of the assets.
- In general the policy statement has replicated the relevant requirements under the SRDII. However, in order to reflect the international nature of the UK’s asset management industry, the FCA has gone beyond the relevant SRDII rules. Consequently, in the UK the new rules will apply to investments in shares not only traded on markets of the European Economic Area (EEA), which is the minimum SRDII requirement, but also on non-EEA comparable markets.
Related party transactions

Certain transactions with related parties may in practice affect the valuation of the company by its shareholders. Therefore, the SRD II also requires companies with shares admitted to trading on regulated markets to provide information on material Related Party Transactions (RPTs) and to establish arrangements for the approval of RPTs. It is noted that issuers with a premium listing are already subject to extensive RPT requirements in the UK and the FCA has generally retained them.

The relevant SRDII rules apply to issuers with a registered office in an EU member state and holding voting shares, which are admitted to trading on a regulated market. In CP19/7, the FCA also proposed to extend these requirements to non-EEA issuers.

The FCA has made the following changes to its original proposals:

Materiality threshold

Originally the FCA proposed the materiality threshold for RPTs covered by the SRDII framework to be 25%. However, in order to increase investor protection, the FCA subsequently lowered the relevant threshold to 5%.

Non-EEA issuers

With a view to lowering the cost of compliance, the FCA has made the rules relating to non-EEA issuers more proportionate. In particular, to avoid conflict with overseas corporate governance obligations, non-EEA issuers can comply with the relevant requirements by obtaining board approval prior to transacting with a related party. Moreover, for the purpose of disclosing information about their RPTs, non-EEA issuers will be allowed to use the definition of a related party under the International Financial Reporting Standards (IFRS) or under the equivalent accounting standards that they use for the preparation of their consolidated annual financial reports.

What should firms do now?

The new rules came into force on 10 June 2019, which was the deadline for implementation of the SRDII. This means that asset managers and life insurers should have already published their engagement policy or explained the reasons for not doing so. However, given the very short period from their publication, the FCA has clarified that for the purposes of complying with these obligations it will be sufficient for a firm to demonstrate that it has taken steps to develop an engagement policy. In addition, it is specified that disclosures, where required, must be made from the first full period after the rules come into effect.

Firms must ensure compliance with the rules concerning related party transactions from the beginning of their first financial year following the entry into force of the new rules.

AUTHORS

Michael McKee
Partner
London | T: +44 (0)20 7349 0296
michael.mckee@dlapiper.com

Chris Whittaker
Senior Associate
London | T: +44 (0)20 7349 0296
chris.whittaker@dlapiper.com