Governance News

Weekly wrap up of key financial services, governance, regulatory, risk and ESG developments.

31 May 2023

Contents

Boards and Directors

FRC consults on revisions to UK Corporate Governance Code

Proposed, 'targeted' revisions to the UK Governance Code include strengthening ESG oversight and reporting requirements

The UK Financial Conduct Authority has released draft changes to the UK Corporate Governance Code for consultation.

The regulator states that:

> 'the main proposed changes concern those parts of the Code which deal with the need for a more robust framework of prudent and effective risk management and internal controls. They are aimed at providing a stronger basis for reporting on, and evidencing the effectiveness of, the framework during the reporting period.

Scope of the consultation

It is not proposed that the structure of the Code would change.

Rather, as flagged, the consultation is aimed at strengthening board oversight of internal controls, clarifying and expanding the role of the audit committee and expanding disclosure expectations in this context. Accordingly, the majority of the proposed changes are to Section 4 – Audit, risk and internal control.

This is in line with the reforms previously flagged by the UK government in Restoring Trust in Audit and Corporate Governance, which are aimed at supporting the FRC's eventual transition into the Audit, Reporting and Governance Authority (ARGA).

Key Changes

The table below provides a high level overview of some of the key changes being proposed. Appendix A to the Consultation Paper is a tracked change version of the proposed changes.

CODE SECTION	PROPOSED KEY CHANGES
Section 1: Board leadership and corporate purpose	**Comply or explain:** The FRC proposes to introduce a new principle setting out the expectation that companies should focus on activities and outcomes 'in order to demonstrate the impact of governance practices and how the Code has been applied' when reporting on their governance activity, as well as providing a 'clear explanation' where there are 'departures from the Code's provisions'. This is aimed at 'improv[ing] the functioning of comply-or-explain'. **ESG and transition planning:** It's also proposed that the provisions under this section be updated to make explicit reference to 'how environmental and social matters are taken into account…including its climate ambitions and transition planning'. On this point, the FCA has asked for feedback on whether the board should on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance. **On culture**, the provisions have been revised to state that the board should not only assess and monitor culture, but also 'report on how effectively the desired culture has been embedded'. **On stakeholder engagement** the provisions have been revised to include the expectation that Chair/boards not only engage with stakeholders but that the outcomes of engagement activities which have occurred during the reporting period are reported.
Section 2 – Division of responsibilities	**Director overboarding:** The only proposed change to this section is a proposed change to provision 15 and concerns new director appointments. It's suggested that the following expectation be added: 'All significant director appointments should be listed in the annual report, describing how each director has sufficient time to undertake their role effectively in light of commitments to other organisations. This should describe any actions taken as a result of this assessment'.

CODE SECTION	PROPOSED KEY CHANGES
	The change is being proposed in response to concerns about director 'overboarding'.
Section 3 - Composition, succession and evaluation	**Director overboarding:** It's proposed that the principles be amended to reflect the expectation that: 'annual performance review should consider each director's commitments to other organisations, and their ability to discharge their responsibilities effectively'. **A broader formulation of diversity:** It's proposed that Principle I be amended to state that: '…Both appointments and succession plans should be based on merit and objective criteria. They should promote equal opportunity, and diversity and inclusion of protected characteristics and non-protected characteristics including cognitive and personal strengths' Currently Principle I includes a list of diversity characteristics to be taken into account. The FCA considers the proposed change would 'capture wider characteristics of diversity'. **DEI in the context of new appointments and succession planning:** It's also proposed that the provisions under this section be amended to set an expectation of additional transparency around how consideration of DEI fits into the work of the board nomination committee and its approach to making appointments/succession planning including disclosure of: ▪ 'succession planning for both board and senior management positions, in order to deliver the company's strategy, including an explanation of how the committee has overseen the development of a diverse pipeline for succession; ▪ the appointments for the board and senior management, including the search and nomination procedures and promotion of diversity; ▪ the effectiveness of the diversity and inclusion policy, including progress towards company objectives and adherence to established initiatives; ▪ the gender balance of those in the senior management'. The FRC expresses the hope that the proposed changes 'will encourage companies to think about specific approaches that suit their individual circumstances, instead of using 'boilerplate' statements in their reporting'.
Section 4 – Audit, risk and internal control	As flagged, the majority of the proposed changes are centred in this section of the Code. **Enhanced role/responsibilities for the Audit Committee:** It's proposed that the provisions under this section concerning the roles/responsibilities of the audit committee be amended to explicitly include: ▪ 'monitoring the integrity of narrative reporting, including sustainability matters, and reviewing any significant reporting judgements; ▪ developing, implementing, and maintaining the audit and assurance policy ▪ engaging with shareholders and other stakeholders on the role of the audit committee, the scope of work of the external auditor, and the approach to the audit and assurance policy; ▪ following the Audit Committees and the External Audit: Minimum Standard; ▪ promoting effective competition during the tendering for an external auditor, to support audit market diversity; ▪ developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, taking into account the relevant regulations and ethical guidance in this regard, and reporting to the board on any improvement or action required'. Feedback is sought in particular on:

CODE SECTION	PROPOSED KEY CHANGES
	▪ the proposed introduction of an expectation that all companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis. ▪ the proposed expansion of the remit of audit committees to include narrative reporting, including sustainability reporting (and where appropriate ESG metrics) **Increased disclosure:** It's also proposed that the provisions concerning the information to be included in the annual report around the work of the audit committee should include: ▪ 'the matters set out in the Audit Committees and the External Audit: Minimum Standard; ▪ the significant issues that the audit committee considered relating to narrative reporting, including sustainability matters, and how these issues were addressed; ▪ where commissioned by the board, the assurance of environmental, social and governance metrics and other sustainability matters; ▪ its approach to developing the triennial audit and assurance policy and the annual implementation report' **Disclosure of principal and emerging risks:** It's proposed that the provisions be amended to include the explicit expectation that companies disclose in the annual report what 'procedures are in place to identify and manage emerging risks and describe these risks'. **Board oversight of internal controls:** It's also proposed that the provisions be amended to include the expectation that the annual report include: ▪ 'A declaration of whether the board can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period and up to the date of the annual report; ▪ An explanation of the basis for its declaration, including how it has monitored and reviewed the effectiveness of these systems; and ▪ A description of any material weaknesses or failures identified and the remedial action being taken, and over what timeframe'.
Section 5 – Remuneration	**Remuneration outcomes:** It's proposed that the provisions under this section be amended to reflect increased expectations around remuneration outcomes and disclosure. The proposed changes include the following. ▪ The inclusion of an explicit expectation that: 'remuneration schemes and policies should enable the use of discretion to override formulaic outcomes. Director contracts and/or other agreements or documents which cover director remuneration should include malus and clawback' ▪ On disclosure, it's proposed that the annual report on remuneration should include a description of malus and clawback provisions including: – 'the minimum circumstances in which malus and clawback provisions could be used – a description of the minimum period for malus and clawback and why the selected period is best suited to the organisation; and – whether the provisions have been used in the last reporting period. If provisions have been used, a clear explanation of the reason should be provided in the annual report. Companies should set out the use of their malus and clawback provisions in the last five years'. ▪ It's also proposed that the provisions be amended to include an explicit expectation that disclosure of the work of the remuneration committee in annual reporting should include – 'an explanation of how the strategic rationale for executive directors' remuneration policies, structures and any performance metrics supports company strategy and environmental, social and governance objectives';

CODE SECTION	PROPOSED KEY CHANGES
	– 'what engagement with shareholders and the workforce has occurred and what the impact this has had on remuneration policy and outcomes, including the alignment with executive remuneration and the overall company pay policy'

Additional reforms

Separately, the FRC writes that new draft legislation is being prepared which will include a requirement for companies with a high number of employees and a high level of turnover - 750 or more employees and a turnover of £750 million or more - to produce a Resilience Statement.

The FRC notes that this new Resilience Statement requirement has implications for the Provisions in the Code which relate to a going concern basis of accounting and company viability.

Annex C to the consultation paper is a summary of the government's draft proposals around this.

Separately, the Financial Conduct Authority (FCA) is also consulting on potential changes to the Listing Rules. Amongst other things, the proposed changes include replacing the existing standard and premium listing to a single category for listed companies. If implemented, the change would mean that more companies would potentially be required by the Listing Rules to follow the Code.

Timeline

- The due date for submissions is 13 September 2023.
- It's envisioned that the revised Code (together with updated guidance) will apply to accounting years commencing on or after 1 January 2025.

[Source: FRC media release 24/05/2023; Consultation Paper]

The case against appointing 'specialist' directors: Why appointing 'specialists' may not be the best approach to improving risk oversight

Writing in Oxford Business Law Blog, Lawrence A Cunningham (US Director and Professor Emeritus of Corporate Governance at George Washington University) reflects on the question of whether appointing 'specialist' directors – that is, directors with specialist expertise in a particular area such as cybersecurity or climate risk – is likely to improve board oversight of these and other specific risks.

The context for the article is the push in some quarters for boards to include specialists as a means of ensuring/demonstrating it has the capability and skills necessary to exercise effective oversight of specific risks eg climate or cyber. Mr Cunningham also notes the potential introduction by the US Securities Exchange Commission (SEC) of new cyber and climate requirements that would, if introduced, mean companies would need to disclose whether expertise in these areas is represented on their board.

Ultimately, Mr Cunningham concludes that:

> 'As alluring as such a change [ie the inclusion of specialist directors on every board] might seem to elevate favoured topics, downsides caution against it'.

These 'downsides' include the following.

- Mr Cunningham considers that the appointment of specialist directors potentially undermines the value that boards traditionally bring to decision making and oversight. That is, in his view, having one specialist director who is effectively more responsible than the other directors on the board for oversight of decisions on a particular issue, has potential to undermine the collective business judgment that a whole board of individuals, each with an equal voice in the boardroom, bring to every agenda item put forward. Mr Cunningham observes:

  > 'By law, every director has the same fiduciary duties of care and loyalty, including good faith oversight. On all topics, it's all hands on deck: if cyber or climate are enduring vital challenges, then every director must develop

an "understanding" and an "ability to assess" the issues - to quote the regulatory expertise required of audit committee members. The concept of a special interest director would undermine these strengths. Such a director may be great at spotting and resolving the thorniest challenge in a field - patching a hack or capping a leak. But if one director is a board's resident cyber or climate expert, others will unduly defer to that person, may skip doing homework or posing questions, and create false complacency. That hurts companies'.

- Mr Cunningham further considers that appointing 'specialist' directors to boards duplicates the expertise traditionally represented by management, again potentially undermining the value that boards bring to decision making. He writes:

  'Directors are generalists, charged with overseeing managers, who are specialists. A company needs chiefs of finance, investment, technology, human resources, and cyber risk. A parallel board, each member with corresponding oversight, would be micromanagement at its worst and leave gaps in oversight'.

- Finally, Mr Cunningham considers that appointing 'specialists' in particular areas is inconsistent with the board's role in overseeing 'broad enduring topics of business…not the hot topics of today'.
- Mr Cunningham also raises practical concerns about how a board full of 'specialists' would operate in practice (assuming these specialists did not also have the necessary skills required to be a good/effective 'generalist' director). Mr Cunningham writes:

  'if special interest directors are warranted for cyber or climate, why not myriad others? How about: employee relations, customer service, or shareholder stewardship? A board of a dozen one-issue directors will be weak in each issue overseen by a lone expert and on every subject, from budgeting to crisis response'.

Suggested alternative

- Mr Cunningham suggests that in practice, boards and companies may be better served by making use of 'specialists' as consultants rather than appointing them as directors (unless the individuals in question also have the generalist skills necessary to be a good/effective directors). He also suggests that this course may also be preferable for the 'specialists'.
- Ultimately, Mr Cunningham suggests boards being pressed to appoint a specialist in a particular area, instead give consideration to engaging in additional training sessions (and provide detailed disclosure around this including director attendance), to help the whole board to 'stay informed, ask good questions and exercise effective oversight' rather than rely on a specialist director.

  [Source: Lawrence A Cunningham, Corporate Directors are Generalists, Not Specialists, Oxford Business Law Blog,18/05/2023]

Shareholder Activism

Amazon shareholders reject all 18 shareholder ESG proposals on a range of issues, in line with the board's recommendation

- 18 shareholder proposals on a range of ESG issues went to a vote at Amazon's 24 May 2023 shareholder meeting (up from 15 last year). Ahead of the meeting, the Amazon board recommended 'against' all 18 proposals and all failed to secure the necessary support to be carried.
- Five proposals (Items 7, 16, 21, 22 and 23 in the Notice) look to have secured over 30% support. Research from BlackRock suggests that it is not necessary for proposals to be carried in order for them to have impact on companies' decision making – according to BlackRock companies responded to 75% of shareholder proposals that attracted 30% support or more.

The table below provides a brief overview of each of the proposals and an indication of how investors voted.

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SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
Climate risk (retirement plan options): Item 6 in the Notice (filed by As You Sow) called on the Amazon board to report on: 'how the Company is protecting Plan beneficiaries with a longer investment time horizon from climate risk in the Company's default retirement options'. As You Sow filed similar proposals at Comcast, FedEx, Netflix	7% support	▪ Norges Bank Investment Management (NBIM) voted against ▪ Legal and General Investment Management (LGIM) voted against ▪ Storebrand voted in support ▪ CalPERS voted against
Technology risk/Human rights (customer due diligence): Item 7 in the Notice (filed by American Baptist Home Mission Society) called on Amazon to: 'commission an independent third-party report…assessing Amazon's customer due diligence process to determine whether customers' use of its products and services with surveillance, computer vision, or cloud storage capabilities contributes to human rights violations'.	34% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Disclosure of handling of 'take down' requests: Item 8 in the Notice (filed by Adrian Dominican Sisters) called on Amazon to (within a year of the annual meeting): 'revise its transparency reporting to provide more detailed quantitative disclosures on removal or restriction of content and products on the Amazon.com platform due to government requests or the company's voluntary removal or restrictions in anticipation or interpretation of domestic or foreign government requirements'.	10% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Disclosure of handling of government 'take down' requests: Item 9 in the Notice (filed by National Legal and Policy Center) called on the company to report semi-annually on:	2% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted against ▪ CalPERS voted against

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SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
'the Company's policy in responding to requests to remove or take down content from its platforms by the Executive Office of the President, Members of Congress, or any other agency, entity or subcontractor on behalf of the United States Government. This report shall also include an itemized listing of such "takedown" requests, including the name and title of the official making the request; the nature and scope of the request; the date of the request; the Company's action or inaction to the request; and a reason or rationale for the Company's response, or lack thereof'.		
Climate change (disclosure of stakeholder impact): Item 10 in the Notice (filed by International Brotherhood of Teamsters General Fund) called on the company to report on how it is: 'addressing the impact of its climate change strategy on relevant stakeholders, including but not limited to employees, workers in its supply chain, and communities in which it operates, consistent with the "Just Transition" guidelines of the International Labor Organization and indicators of the World Benchmarking Alliance.'	28% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
GRI-aligned tax disclosure: Item 11 in the Notice (filed by Missionary Oblates of Mary Immaculate – United States Province) called on Amazon to: 'issue a tax transparency report to shareholders…prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard'	18% support	▪ NBIM voted in support on the basis that: 'The board should account for material sustainability risks facing the company, and the broader environmental and social consequences of its operations and products. Sustainability disclosures should be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities.' ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Lobbying disclosure: Item 12 in the Notice (filed by Eric and Emily Johnson and Mercy Rome, represented by Newground Social Investment) called on Amazon to report on: 'its framework for identifying and addressing misalignments between Amazon's lobbying and policy influence activities and positions, both direct and indirect through trade associations, coalitions, alliances, and social	24%support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support

AMAZON		
SHAREHOLDER PROPOSAL	APPROX. RESULT	HOW INVESTORS VOTED
welfare organizations (“Associations”), and its Net Zero (emissions) climate commitments, including the criteria used to assess alignment, the escalation strategies used to address misalignments, and the circumstances under which escalation strategies are used (eg, timeline, sequencing, degree of influence over an Association)'		
Race and gender pay gap disclosure: Item 13 in the Notice (filed by Anne Bartol Butterfield, represented by Arjuna Capital) called on the company to report on: 'median pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent.'	29% support	▪ NBIM voted in support. The justification given is identical to that given for voting in support of Item 11 ▪ LGIM voted in support ▪ Storebrand voted in support
(Conservative proposal) Cost/benefit analysis of DEI programs: Item 14 in the Notice (filed by National Center for Public Policy Research) called on Amazon to: 'conduct and report on a cost/benefit analysis of its Diversity, Equity & Inclusion programs. The report should…consider all relevant costs and benefits, including the reputational costs arising from discriminating on the basis of race, sex and orientation; the financial costs of selecting employees on bases other than merit; the costs associated with relying on incomplete or biased evidence, and related costs'.	1% support	▪ NBIM voted against ▪ LGIM voted against ▪ Storebrand voted against ▪ CalPERS voted against
Director appointments: Item 15 in the Notice (filed by James McRitchie, represented by John Chevedden) called on Amazon to: 'amend its bylaws to include the following language: “Shareholder approval is required for any advance notice bylaw amendments that: 1. require nomination of candidates more than 60 days before the annual meeting, 2. impose new disclosure requirements for director nominees, including disclosures related to past and future plans, or 3. require nominating shareholders to disclose limited partners or business associates, except to the extent such investors own more than 5% of Amazon.com’s shares'.	12% support	▪ NBIM voted against ▪ LGIM voted against ▪ Storebrand voted against ▪ CalPERS voted in support

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SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
Labour rights audit (freedom of association/union membership): Item 16 in the Notice (filed by Catherine Donnelly Foundation, represented by the Shareholder Association for Research & Education) called on Amazon to 'commission an independent, third-party assessment of Amazon's adherence to its stated commitment to workers' freedom of association and collective bargaining rights as outlined in Amazon's Global Human Rights Principles, which explicitly reference the Core Conventions of the International Labour Organization and the ILO Declaration on Fundamental Principles and Rights at Work. The assessment should address management non-interference when employees exercise their right to form or join a trade union as well as steps to remedy any practices inconsistent with Amazon's stated commitments. The assessment…should be publicly disclosed on Amazon's website by November 30, 2023'.	35% support	▪ NBIM voted in support. The justification given is identical to that given for voting in support of Item 11 ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Pay equity: Item 17 in the Notice (filed by AFL-CIO Reserve Fund) called on Amazon's Leadership Development and Compensation Committee to: 'take into consideration the pay grades and/or salary ranges of all classifications of Company employees when setting target amounts for senior executive officer compensation. The Committee should describe in the Company's proxy statements how it complies with this requested policy. Compliance with this policy is excused if it will result in the violation of any existing contractual obligation or the terms of any existing compensation plan'.	7% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted against ▪ CalPERS voted in support
Animal welfare: Item 18 in the Notice (filed by MacConnel Lowe Trust, represented by People for the Ethical Treatment of Animals) called on Amazon to report before the end of the 2023 calendar year on: 'the efficacy and shortcomings of Whole Foods' animal welfare standards and auditing procedures'.	6% support	▪ NBIM voted against ▪ LGIM voted against ▪ Storebrand voted in support ▪ CalPERS voted against
Public policy oversight: Item 19 in the Notice (filed by Jing Zhao) called on Amazon to 'establish a Public Policy Committee.' This was submitted to be necessary to 'assist the board to oversee [a range of] public policy issues'. Importantly, the proponent attributes the high volume of shareholder proposals filed at the company to the absence of the proposed committee. The supporting statement comments:	6% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted against

AMAZON		
SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
'Many public policy issues have been voted at our previous shareholders meetings, many more public policy issues will come because we don't have a Public Policy Committee'.		
Worker board representation: Item 20 in the Notice (filed by Oxfam America, Inc) called on the board to 'adopt a policy of promoting significant representation of employee perspectives among corporate decision makers by requiring that the initial list of candidates from which new board nominees are chosen (the "Initial List") by the Nominating and Governance Committee include (but need not be limited to) hourly employees. The policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates'.	18% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted against
Labour rights (worker conditions/treatment): Item 21 in the Notice (filed by Thomas Dadashi Tazehozi, represented by Tulipshare Limited) called on the company to: 'commission an independent audit and report of the working conditions and treatment that Amazon warehouse workers face, including the impact of its policies, management, performance metrics, and targets.'	35% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Climate (Plastics usage): Item 22 in the Notice (filed by The George Gund Foundation, represented by As You Sow) called on Amazon to report on: 'how the Company could reduce its plastics use in alignment with the one-third reduction findings of the Pew Report, or other authoritative sources, to significantly reduce ocean plastic pollution'.	32% support	▪ NBIM voted against ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support
Technology risk (privacy, civil rights, human rights): Item 23 in the Notice (filed by John Harrington) called for Amazon to commission and report on the findings of an independent review of 'Rekognition' including: ▪ 'the extent to which such technology may endanger, threaten or violate privacy and/ or civil rights, and unfairly or disproportionately target or surveil people of colour, immigrants and activists in the US' ▪ 'the extent to which such technologies may be marketed and sold to authoritarian or repressive governments, including those identified by the US Department of State Country Reports on Human Rights Practices' ▪ 'the potential loss of good will and other financial risks associated with these human rights issues; The report should be produced at reasonable	37% support	▪ NBIM voted in support. The justification given is identical to that given for voting in support of Item 11. ▪ LGIM voted in support ▪ Storebrand voted in support ▪ CalPERS voted in support

AMAZON		
SHAREHOLDER PROPOSAL	APPROX. RESULT	HOW INVESTORS VOTED
expense, exclude proprietary or legally privileged information, published no later than September 1st, 2023'.		

[Sources: Amazon Notice of Meeting 2023; Results of meeting]

30% of Glencore shareholders opposed the company's Say on Climate resolution, while a similar proportion backed a shareholder coal-production resolution at the 26 May meeting

- A shareholder coal production resolution (Resolution 19 in the Notice, coordinated by ShareAction and the Australasian Centre for Corporate Responsibility (ACCR)), and backed by a number of institutional investors secured 29.2% support at the Glencore annual shareholder meeting on 26 May 2023.
- The resolution, which was 'flagged' by Climate Action 100+, called on the company to disclose how it's projected thermal coal production aligns with the goals of the Paris Agreement and with the IEA Net Zero scenario timelines for the phase out of unabated thermal coal. Full text of resolution here.

  [Note on 'flagging': For clarity, investor signatories to Climate Action 100+ are not bound to/required to vote against 'flagged' resolutions – they vote on shareholder proposals in their individual capacity and not on behalf of the Climate Action 100+ initiative. Nor does Climate Action 100+ 'take a formal position on shareholder voting'. Rather, 'flagging' a resolution considered to be aligned with the goals of the initiative is intended to highlight/draw attention to the resolution and help ensure it receives due consideration from investor signatories to the initiative. Climate Action 100+ publishes a list of 'flagged' proposals (which is regularly updated) here]
- Ahead of the meeting, a number of other institutional investors predeclared their support for the resolution, and major proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis also backed it (against the Glencore board's recommendation).

Management-proposed 'Say on Climate' resolution

- Separately, 30.25% of shareholders voted against Glencore's 2022 Climate Report ('Say on Climate' resolution). For context, according to Georgeson the average level of votes 'against' 'Say on Climate' resolutions globally stood at 9.5% in 2022 (up from 3.1% in 2021).

Comment from co-filers

- In a statement commenting on the results, the resolution co-filers described the outcome as:

  'a clear indication that institutional capital is increasingly alert to the risks of thermal coal and investors expect disclosures that enable them to navigate energy transition risks'.
- LGIM Global ESG Analyst – Investment Stewardship, Dror Elkayam added:

  'We are encouraged by the strong and robust support of our proposal. This is a clear signal by shareholders that further disclosure around the company's thermal coal business is imperative. We look forward to building on the progress the company has already made on some key elements of disclosure over the next few months.'

  [Sources: Notice of Meeting; Results of Meeting]

Shareholder Racial Equity Audit proposal secures 35% support at The Travelers

- Shareholders rejected all four shareholder ESG proposals that went to a vote at US insurer The Travelers, in line with the board's 'against' recommendation.
- One of the four proposals calling for a third party racial equity audit was the only one to secure over 30% support.

The table below provides an overview of each of the proposals, the result and an indication of how investors voted.

THE TRAVELERS		
PROPOSAL	APPROX RESULT	HOW INVESTORS VOTED
Climate: Alignment of underwriting/insuring/investment with Paris aligned GHG Targets: (Item 6 on in the Notice, filed by As You Sow) calls on the company to report on 'if an how it intends to measure disclose and reduce the greenhouse gas emissions associated with its underwriting, insuring and investment activities in alignment with the Paris Agreement's 1.5 goal requiring net zero emissions'. As You Sow filed similar proposals at both Berkshire Hathaway and Chubb. The proposal at Berkshire Hathaway secured approximately 23% support, the proposal at Chubb secured approximately 29% support.	▪ 15% support	▪ Norges Bank Investment Management (NBIM) voted against. Interestingly, NBIM backed similar proposals at Berkshire Hathaway and Chubb ▪ Legal and General Investment Management (LGIM) voted in support, stating that: 'A vote in favour is applied to improve transparency on the company's activities financing activities that will hamper climate change mitigation'. LGIM also voted in support of similar proposals at Chubb and Berkshire Hathaway. ▪ Storebrand also voted in support stating that: 'A vote FOR this proposal is warranted, because it would help shareholders better evaluate the company's management of climate risks from its underwriting, investment, and insurance activities'. This is again consistent with its support of a similar proposal at Berkshire Hathaway and at Chubb. ▪ CalPERS voted in support consistent with its support for a similar resolution at Chubb and support the proposal at Berkshire Hathaway. ▪ CalSTRS voted against. CalSTRS also voted against a similar proposal at Chubb, but interestingly, voted in support of a similar proposal at Berkshire Hathaway.
Adopt Time-Bound Policy to Phase Out Underwriting for New Fossil Fuel Exploration and Development (Item 7 in the Notice, filed by Green Century) called on the company to establish a timeline for phasing out underwriting of new fossil fuel projects. Green Century also filed similar shareholder proposals with Chubb and The Hartford calling on the companies to stop underwriting new fossil fuel projects. The proposal at The Hartford secured a similar level of support.	▪ 9% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote in support of this proposal is applied as LGIM expects company boards to devise a strategy and 1.5C-aligned pathway in line with the company's stated commitments and recent global energy scenarios. This includes but is not limited to, devising sector exclusion policies for thermal coal and a time-bound policy to phase-out underwriting in

THE TRAVELERS		
PROPOSAL	APPROX RESULT	HOW INVESTORS VOTED
		new exploration and development of oil and gas supply'. ▪ Storebrand voted against stating that: 'A vote AGAINST this proposal is warranted because a phase out of underwriting new fossil fuel development does not appear to be a standard industry practice in the U.S. at this time'. ▪ CalPERS voted against. ▪ CalSTRS voted in support.
Racial Equity Audit (Item 8 in the Notice, filed by Trillium ESG Global Equity) called on the board to oversee a third party racial equity audit and report on the findings/recommendations. Importantly, the proposal calls for this process to include input from stakeholders (eg civil rights organisations, employees and customers).	▪ 35% support	▪ NBIM voted in support stating that: 'The board should account for material sustainability risks facing the company, and the broader environmental and social consequences of its operations and products. Sustainability disclosures should be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities.' ▪ LGIM voted in support stating that: 'A vote in favour is applied as LGIM supports proposals related to diversity and inclusion policies as we consider these issues to be a material risk to companies'. ▪ Storebrand voted in support stating that: 'A vote FOR this resolution is warranted, as an independent racial equity audit would help shareholders better assess the effectiveness of Travelers' efforts to address the issue of any inequality in its workforce and its management of related risks'. ▪ CalPERS voted in support. ▪ CalSTRS voted in support.
Insuring Law Enforcement (Item 9 in the Notice filed by Arjuna Capital) called for the company to report on 'current company policies and practices, and options for changes to such policies, to help ensure its insurance offerings reduce and do not increase the potential for racist police brutality, nor associate our brand with police	▪ 10% support	▪ NBIM voted against ▪ LGIM also voted against stating that: 'Having reviewed this resolution support is not warranted at this time'. ▪ Storebrand voted in support stating that:

THE TRAVELERS		
PROPOSAL	APPROX RESULT	HOW INVESTORS VOTED
violations of civil rights and liberties. The report should assess related reputational, competitive, operational, and financial risks.'		'A vote FOR this proposal is warranted. Additional information on the company's policies and practices to ensure that its insurance products does not contribute to police brutality against minority populations would help shareholders assess management's oversight of related risks.' ▪ CalPERS voted against. ▪ CalSTRS voted against.

[Sources: The Travelers: Notice of Meeting; Results of Meeting]

20% of shareholders back Scope 3 shareholder proposal at The Southern Company

- Investors in power/gas utility company, the Southern Company, rejected both shareholder proposals that went to a vote at the 2023 meeting, in line with the board's 'against' recommendation.
- A governance proposal (request for simple-majority vote) secured close to 40% support, while the level of support for a shareholder climate proposal (Scope 3 GHG targets request) was significantly lower (20% support).

The table below provides an overview of the two shareholder proposals that went to a vote, the result in each case and an indication of how investors voted.

THE SOUTHERN COMPANY		
PROPOSAL	RESULT	HOW INVESTORS VOTED
Simple Majority Vote: (Item 6 in the Notice, filed by John Chevedden) called for the: 'board take each step necessary so that each voting requirement in our charter and bylaws (that is explicit or implicit due to default to state law) that calls for a greater than simple majority vote be replaced by a requirement for a majority of the votes cast for and against such proposals, or a simple majority in compliance with applicable laws'	38.03% support	▪ Norges Bank Investment Management (NBIM) voted in support stating that: 'anti-takeover measures are generally not in the interest of shareholders, and the introduction of such measures should, at a minimum, be subject to shareholder approval. We define anti-takeover measures to include any mechanism likely to deter or frustrate takeovers'. ▪ Legal and General Investment Management (LGIM) voted in support stating that: 'A vote in favour is applied as reducing the supermajority vote requirement will improve minority shareholder rights'. ▪ CalPERS voted in support ▪ CalSTRS voted in support
Scope 3 GHG targets: (Proposal 7 in the Notice, filed by As You Sow) called for the board to issue a report disclosing: 'short and long-term targets aligned with the Paris Agreement's 1.5oC goal requiring Net Zero emissions by 2050 for	19.77% support	▪ NBIM voted in support stating that: 'The board should account for material sustainability risks facing the company, and the broader environmental and social consequences of its operations and products. Sustainability disclosures should

THE SOUTHERN COMPANY		
PROPOSAL	RESULT	HOW INVESTORS VOTED
the full range of its Scope 3 value chain GHG emissions'.		be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities'. ▪ LGIM voted in support stating that: 'A vote in support of this proposal is warranted as LGIM expects increasing transparency of strategy aligned to 1.5C pathway in line with the company's stated commitments. This includes the disclosure of scope 1, 2 and material scope 3 GHG emissions and short-, medium- and long-term GHG emissions reduction targets. We will continue to monitor the Company's commitments and disclosures in this regard'. ▪ CalPERS voted in support ▪ CalSTRS voted against

[Source: Southern Company: Notice of Meeting; Results of Meeting]

Disclosure and Reporting

UK launches review of non-financial reporting requirements

The UK government (together with the Financial Reporting Council (FRC)) is conducting a review of the non-financial reporting requirements companies are required to comply with to produce their annual reports.

As a first step in the review process, the government has issued a 12 week Call for Evidence – the due date for submissions is 16 August 2023.

Why is the review being undertaken?

Over time, there has been a significant expansion in the types of non-financial information companies are expected to report, both in annual reports and outside it (eg gender pay gap and modern slavery information).

A key driver behind the review is the volume of reporting now being produced, and whether this delivers on its intended objectives. That is, whether/how successfully the existing non-financial reporting framework:

- increases transparency around how companies approach non-financial risks, policies and strategy, and their progress or approach to broader societal and ethical issues
- supports the directors in making policy decisions, setting future strategy and allocating resource across their organisation
- enables more informed investment decisions by providing important information about a company's operations, risks, opportunities, and ethical practices that is not captured by financial accounts.

The Call for Evidence sums up the purpose of the review as follows:

> 'Through the non-financial reporting review, the government is looking at what opportunities exist to refresh and rationalise current reporting requirements so that the UK's non-financial reporting framework is fit for purpose and delivers decision-useful information to the market'.

Similarly, the FRC states that:

> 'the objective of the review process is to deliver a simplified reporting framework for UK companies'.

UK to be the world's first net zero aligned financial centre?

The Call for Evidence also underlines the UK government's ambition for the UK to become the world's first net zero aligned financial centre and points, in line with this ambition, to the planned introduction of new disclosure requirements as highlighted in the government's 2023 Green Finance Strategy.

As such, the government considers the review is an opportunity for a:

> 'fresh look at the body of requirements companies need to comply with to ensure that the UK's corporate reporting framework continues to deliver what investors and other stakeholders need to support economic growth and long-term value creation'.

Scope and focus of the Review

The review will consider:

- The costs and benefits of current non-financial reporting requirements and whether there are opportunities to streamline existing reporting requirements. This will include consideration of:
  - 'how easy, or hard, it is to comply with current requirements, whether there are any difficulties in relation to data collection and what more could be done to make the production and distribution of information easier
  - whether requirements are leading to the production of decision-useful information for use by investors, wider stakeholders and by the board of directors of companies themselves
  - whether information produced by companies is readily available and accessible to stakeholders that may wish to use it to inform investment decisions and support their stewardship role
  - the degree to which stakeholders believe that requirements within company law align with regulatory rules set by other regulators such as the Financial Conduct Authority (FCA) and Prudential Regulatory Authority (PRA)'.
- Whether existing company size thresholds and definitions used to determine whether companies need to comply with non financial reporting requirements remain appropriate and view on whether 'they should be rationalised and simplified',
- Stakeholder views on the 'future of the UK's future non-financial reporting framework' including how this fits with the development/emergence of other reporting initiatives. In particular, views are sought on how best to integrate the standards currently under development by the ISSB into the UK's reporting framework. On this point, the government flags that it intends to conduct 'outreach' on the ISSB's first two standards (once finalised), which is expected in June 2023.

The Call for Evidence is chiefly focused on the non-financial information requirements in Part 15 of the Companies Act 2006 (UK), as well as equivalent requirements for Limited Liability Partnerships (though feedback is also sought on other reporting requirements they comply with).

Next steps

Insights gains from this initial process will be used to inform the development of detailed reform proposals. It's envisioned that the government will conduct a consultation on these proposals in 2024, before legislating the changes.

> [Sources: FRC media release 24/05/2023; UK Department of Business and Trade: Consultation Smarter regulation non-financial reporting review: call for evidence 24/05/2023, Call for Evidence]

Institutional Investors and Stewardship

Towards benchmarking stewardship resourcing: Global survey launched

- As part of their work towards developing a methodology for benchmarking stewardship resourcing, The Thinking Ahead Institute and the Principles of Responsible Investment (PRI), have released a ten question survey aimed at institutional investors.

- The survey will collect stewardship resourcing data from the investment industry to 'gain a deeper understanding of current stewardship practices resources and key stewardship costs'. Topics covered include:
  - Asset and asset allocation data
  - HR data on staff-related costs and/or the number of staff
  - The different types of stewardship-related activities carried out by the organisation
  - (For asset owners) external manager fee related costs.
- It's envisioned that this data will inform planned voluntary guidance on the level of resourcing needed for effective stewardship.
- Responses are requested 'before' 30 June 2023. A report is planned to be published 'later this year'.

[Source: The Thinking Ahead Institute: The Global Stewardship Resourcing Survey]

ESG

Lloyds is the latest insurer to withdraw from the NZIA

In a two sentence statement, Lloyds confirmed on 26 May 2023, its decision to withdraw from the UN-convened Net Zero Insurer's Alliance, with immediate effect. QBE has also announced its withdrawal.

This follows the withdrawal of a number of other insurers including: Allianz, AXA, Scor, Swiss Re, Hannover Re, Munich Re, and Zurich (see: Reinsurance News).

A response to concerns from US red states?

The withdrawals follow a 15 May 2023 letter from 23 US State Attorney Generals to NZIA members, raising concerns about the

> 'legality of your [NZIA members'] commitments to collaborate with other insurers and asset owners in order to advance an activist climate agenda'.

More particularly, the letter suggests that NZIA members' commitments/goals are contrary to Federal and State anti-trust laws.

Utah Attorney General Sean D Reyes attributes the recent spate of withdrawals from NZIA to the impact of the letter, stating that the signatories to the letter will

> 'continue to be vigilant and take legal action where necessary to protect Americans from the dangers of ESG'.

> [Sources: Lloyds media release 26/05/2023; Utah State Attorney General Sean D Reyes media release 23/05/2023]

ASIC signs MoU with the National Offshore Petroleum Safety and Environment Management Authority

- The Australian Securities and Investments Commission (ASIC) has signed a new Memorandum of Understanding (MoU) with the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) outlining their approach to 'the supervision and oversight of offshore oil and gas companies in Australia'.
- For context, NOPSEMA is responsible for ensuring that companies owning offshore petroleum sites comply with their obligations to remediate a site at the end of a project, while ASIC is responsible for ensuring that a provision for the cost of this obligation is appropriately accounted for in companies' financial reports and other regulatory documents under ASIC's remit.

- The MoU underlines ASIC and NOPSEMA's willingness to cooperate with each other in fulfilling their respective mandates.

[Source: ASIC media release 26/05/2023]

Global ESG Regulation Tracker released

Sustainable Fitch has released the first issue of its global ESG Regulation Tracker – a report tracking ESG regulatory developments, including climate disclosure and ESG fund requirements, globally. The report is planned to be updated quarterly.

[Source: Sustainable Fitch media release 30/03/2023]

In Brief | Not on track: MSCI's latest report tracking the alignment of listed companies globally with the goal of limiting global temperature rise to 1.5°C predicts that, based on an analysis of their future emissions pathways and current climate commitments, companies are on a 2.7°C pathway

[Source: MSCI Net Zero Tracker May 2023]

In Brief | New research analysing the impact of climate litigation on firm value concludes that: 'lenders, financial regulators, and governments should consider climate litigation risk as a relevant financial risk in a warmer future' (given the loss of value found to result from climate litigation)

[Source: Grantham Research Institute on Climate Change and the Environment media release 23/05/2023 ; Full text report]

Financial Services

Top Story | Regulatory focus on combatting scams and strengthening cyber resilience continues: New announcements from APRA and ASIC

As previously reported, following a record year for consumer scam losses, regulators, have stepped up their focus on scam prevention. Likewise, the government and the Australian Banking Association have recently announced new anti-scam measures (see: Combatting online scams: Government and the banking sector announce new measures).

Regulatory focus on the issue continues this week, with the Australian Prudential Regulation Authority (APRA) calling on the banking, insurance and superannuation sectors to review their use of multi-factor authentication.

APRA flags gaps in current approach to multi-factor authentication, calls on regulated entities to review their approach

APRA has written to APRA-regulated entities underlining the importance of using multi-factor authentication (MFA), one of the Essential 8 mitigation strategies, to protect against cyber threats.

APRA states that MFA is

> 'one of the most effective controls an organisation can implement to prevent an adversary from gaining access to a device or network'

The letter outlines APRA's observations on 'gaps in the implementation of MFA across its regulated industries'. In particular, the letter flags that APRA has:

> 'noted examples where MFA for customers has been deployed on an opt-in basis, or where exceptions have been granted for customers without mobile phones or located in areas without reliable phone reception. Other examples include remote access being provided for third-party staff without associated MFA'.

The letter makes clear that APRA

> 'expects APRA-regulated entities to review the coverage of MFA in their operating and technology environments. Where gaps in the coverage of MFA have the potential to materially affect, financially or non-financially, the entity or the interests of depositors, policyholders, beneficiaries or other customers, **APRA would consider this to be a material security control weakness, and under paragraph 36 of CPS 234 require an entity to notify APRA'** [emphasis added]

The letter directs entities to refer to Prudential Standard CPS 234 Information Security (and accompanying guidance) for more information on APRA's expectations in this area.

APRA adds that it plans to review CPS 234 'to clarify our expectations on information security controls and provide additional guidance for industry' (though no specific timeframe is given for this).

ASIC to roll out Cyber Pulse Survey

Separately, the Australian Securities and Investments Commission (ASIC) has said it will conduct a survey gauging the strength of regulated entities' cyber capabilities/cyber resilience. Specifically, the survey is intended to help organisations to assess their ability to:

- govern and manage organisational-wide cyber risks
- identify and protect information assets that support critical business services
- detect, respond to, and recover from cyber security incidents.

ASIC says that the multiple choice survey is 'suitable for ASIC-regulated entities of all sizes and sectors' and that participation will be voluntary. ASIC also assures those who choose to participate that:

> 'all information collected will be anonymous and cannot be used against you in regulatory or enforcement action'.

On completion of the survey, survey participants will have the option to receive an individual report providing

> 'insights into how you assess your organisation's current cyber resilience capability compared to your industry peers'.

ASIC also plans to publish a report on the key findings, which is expected to provide sectoral insights, and highlight better practices and areas for improvement.

[Source: ASIC Market Integrity Update Issue 148 25/05/2023; APRA letter to industry 26/05/2023]

LIBOR transition: ASIC urges firms to 'maintain momentum and not lose focus in managing their LIBOR exposure'

The Australian Securities and Investments Commission's (ASIC) latest Market Integrity Update includes a reminder to market participants with exposure to USD LIBOR to 'maintain momentum and not lose focus in managing their remaining LIBOR exposure'.

ASIC comments:

> 'Although participants have not reported any significant barriers to a successful transition, with the market appearing to have benefited from the non-USD LIBOR cessation in December 2021, we encourage participants to remain focused on their operational capabilities and to continue to make good progress on client transitions and contract amendments.
>
> Exposure to synthetic LIBOR is also critically important. Last month, the FCA announced its decision to support synthetic LIBOR until the end of September 2024. We support the FCA's position on the use of synthetic LIBOR, noting that synthetic LIBOR should not be used in new contracts. We expect participants to continue pursuing the active transition of synthetic LIBOR and remove their dependency as soon as possible to avoid contractual uncertainties or operational issues'.

ASIC also 'reminded' participants that 'contracts should reference robust benchmarks recommended by the relevant regulators and working groups'.

[Source: ASIC Market Integrity Update Issue 148 25/05/2023]

Assistant Treasurer underlines the importance of mitigation (and data on what works) in tackling insurance affordability and accessibility challenges, and making communities safer

Our key takeaways from Assistant Treasurer Stephen Jones' 29 May 2023 address to the International Congress of Actuaries are below.

Investment in mitigation/resilience is key to addressing affordability and accessibility challenges

- Mr Jones recapped the climate measures the government has implemented/is implementing, underlining that the impacts of climate change in Australia are already palpable, with low income earners often the hardest hit. Mr Jones observed:

  > 'In Australia, when we talk about the effects of climate change, we no longer use the future tense. And of course, there is an inequity at the centre of all this…To put it bluntly: when a disaster hits, it's usually poorer people who suffer the worst of it. They're the ones who live in valley rather than on the hill, and who cop the heat of the sun without a sea breeze to take the edge off it. In Sydney's west, a hot day can be a full 10 degrees hotter than it is on the coast. And they are the same people who struggle to afford mitigation work. And they are the same people who are struggling to afford insurance'.

- Mr Jones observed that growing rates of under-insurance (especially in disadvantaged communities) and high rates of insurance vulnerability are putting upward pressure on premiums, further exacerbating affordability challenges.
- In light of this, Mr Jones emphasised the imperative to 'go after the risk' at the heart of these affordability and accessibility challenges by supporting mitigating and resilience measures. This, he said would not only put downward pressure on premiums, but make communities safer.
- Mr Jones underlined that increased government spending (as compared with the former government) on mitigation is necessary and justified through the savings such investment is known to deliver. In illustration of this, Mr Jones pointed to $28 million spent on building a levy in Roma in Southwest Queensland following a catastrophic flood in 2012 which he said, is already estimated to have produced savings of $130 million for the local community.

Mitigation projects

- Mr Jones listed a number of government measures targeted at disaster risk reduction and improving disaster readiness, especially in disaster-prone areas. These include:
  - up to $200 million a year over the next five years through the Disaster Ready Fund, to help communities improve their disaster readiness through funding mitigation measures eg levee and drainage system upgrades, bushfire risk reduction
  - the Hazards Insurance Partnership (established from the October 2022–23 Budget) – a partnership between government and the insurance sector, managed by the National Emergency Management Agency (NEMA) – tasked with (among other things):
    - 'reviewing existing efforts across both government and the insurance industry to develop a bank of private mitigation actions that can be taken to reduce the impacts of natural hazards'
    - 'pursuing public-private partnerships that leverage risk-reduction investments that the public and private sectors can jointly undertake. NEMA is scoping opportunities for government-industry partnerships that have the potential to build resilience through strategic investment and planning decisions'.
  - the Australian Reinsurance Pool Corporation which has been operating the cyclone reinsurance pool since 1 July 2022. This is designed to improve insurance affordability for household, strata and small business property policies in cyclone-prone regions, mainly located in northern Australia.

Data is key

- Mr Jones said that data on insurance affordability, availability and coverage is often limited, and that this makes understanding 'the scope and scale of issues' more difficult to get a handle on, and policy interventions more difficult to target. To address this Mr Jones flagged that the government has tasked the Australian Climate Service with 'creating an enduring data asset on insurance affordability, underinsurance, and non-insurance'.

- Mr Jones said that the data collected would highlight 'what works' and highlight the steps households can take to reduce risk (and cost). On this last point, Mr Jones emphasised that work households undertake to mitigate their risk should be reflected in insurance premiums. That is, insurance policy holders who undertake mitigation works should not be 'lumped with the same premium as people who are not taking those steps'.

Two asks of insurers

Mr Jones said that insurers have two key roles:

- 'we want insurers to keep working with us to improve the information we have at hand, and harness that information to target the work we are doing on mitigation and risk reduction with more and more precision'; and
- ;second, we want insurers to respond when improvements are made. This was a major recommendation from the Royal Commission into National Natural Disaster Arrangements, and it just makes sense. When households reduce their risk by making improvements to their home, insurers ought to recognise that in the pricing of premiums. And they ought to tell households in advance about things they can do that will bring their premiums down'.

[Source: Assistant Treasurer and Minister for Financial Services Stephen Jones Address to the International Congress of Actuaries 29/05/2023]

Financial Adviser registration requirements: ASIC to extend the deadline for financial advisers to be registered to 1 October 2023

New registration requirements

- The requirement for financial advisers who provide personal advice to retail clients on relevant financial products to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021, in response to Hayne Recommendation 2.10.
- On 1 November 2022, the government announced that it would delay the financial adviser registration requirement until 1 July 2023 to allow time for improvements to be made to Stage 1 of the registration requirements. A Bill - Treasury Laws Amendment (2023 Measures No.1) Bill 2023 – currently before parliament proposes to introduce these requirements.

ASIC to further extend the deadline for registration

The Australian Securities and Investments Commission (ASIC) has announced it will further extend the date by which financial advisers must be registered to 1 October 2023.

ASIC states that the additional time will allow:

- 'Parliament to consider the improvements proposed by the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 Bill;
- ASIC to assist the financial advice industry to understand and comply with the registration requirement by issuing regulatory guidance and conducting webinars; and
- Australian financial service (AFS) licensees to understand the registration requirement and to make necessary applications to register their relevant providers with ASIC'.

Following the (anticipated) passage of Treasury Laws Amendment (2023 Measures No. 1) Bill 2023, ASIC plans to issue regulatory guidance, conduct webinars, and open a registration portal to commence accepting applications for registration.

[Source: ASIC media release 30/05/2023]

US regulator to take tougher line on pushing banks, especially larger and more complex banks, to address 'persistent weaknesses'

The US Office of the Comptroller of the Currency (OCC) has released a revised Policies and Procedures Manual (PPM) for bank enforcement actions and related matters, setting out the regulator's approach to tackling the issue of 'persistent weaknesses' primarily in larger and more complex banks (though the PPM makes clear that the OCC 'may apply this framework, including the restrictions discussed below, to any bank').

The updated PPM includes a new appendix – Appendix C: Actions against banks with persistent weaknesses' –with outlines both:

- 'persistent weaknesses a bank may exhibit warranting further action(s) by the OCC against the bank'. These weaknesses include, for example:
  - insufficient quality of risk management assessments, for more than three years
  - multiple enforcement actions against the bank during a three-year period
  - failure to implement and adhere to all corrective actions required by a formal enforcement action within a reasonable timeframe
- the types of actions, requirements, and restrictions that may be appropriate to address a bank's persistent weaknesses'. These actions could include requiring the bank to 'simplify or reduce its operations including that the bank reduce its asset size, divest subsidiaries or business lines, or exit from one or more markets of operation'.

Announcing this Acting Comptroller of the Currency Michael J Hsu commented:

> 'This revised policy promotes strong management by making clear that a bank's inability to correct persistent weaknesses will result in proportionate, fair, and appropriate consequences, including growth restrictions and divestitures when warranted…These guardrails are especially important today, as banks grow to better serve their communities, improve their competitiveness, and achieve economies of scale. Well-managed banks provide invaluable support to our economy, and this revised policy promotes this result.'

The release of the updated PPM follows a speech from Mr Hsu in January 2023 in which he flagged the OCC's intention to take a tougher line on how banks address 'TBTM' (ie too big to manage) risks, including (potentially) taking action to 'break up' banks that have become too large to effectively manage themselves.

[Sources: OCC media release 25/05/2023; OCC Bulletin 2023-16: OCC Enforcement Actions: Revised Policies and Procedures Manual for Bank Enforcement Actions and Related Matters 25/05/2023; Revised PPM: Policies and Procedures Manual (PPM) 5310-3, Bank Enforcement Actions and Related Matters]

In Brief | The AFR reports that in a recent speech, Banking Royal Commissioner Kenneth Hayne called for companies, boards and regulators to remember the norms of conduct outlined in the Banking Royal Commission Final Report. Based on the article, Mr Hayne emphasised that strong adherence to, and enforcement of requirements, in line with these norms is needed in order to guard against poor conduct

[Source: The AFR 30/05/2023]

Accounting and Audit

FRC announces new initiative to support smaller firms in conducting high quality audits in the PIE market

- The UK Financial Reporting Council (FRC) has announced the launch of a new initiative - The Scalebox initiative – aimed at supporting smaller firms in conducting 'high-quality audits in the Public Interest Entity (PIE) market' in line with regulatory expectations.
- All firms currently in Tier 2 and Tier 3 for FRC Supervision purposes are eligible to join the Scalebox as well as firms intending to enter the PIE audit market.
- The initiative is being overseen by an independent team within the FRC's Audit Firm Supervision team. The work of this team will include undertaking reviews of:
  - 'aspects of completed audits' and providing feedback on good practice/areas for improvement
  - certain elements of individual firms' quality control systems, including 'specific areas of audit methodology and audit approach'
  - individual firms' 'actual or proposed governance processes if it has chosen or is planning to adopt the Audit Firm Governance Code'
- Announcing this, FRC Deputy CEO and Executive Director of Supervision Sarah Rapson, said the initiative underlines the regulator's commitment to working with firms to increase their audit capabilities/capacity in line with the broader objective of increasing competition (while maintaining high audit quality standards) over time. Ms Rapson also pointed to the FRC's latest report, as a source of guidance to smaller audit firms.

[Source: FRC media release 25/05/2023]

Insolvency and Reconstruction

In Brief | The Parliamentary Joint Committee on Corporations and Financial Services has extended the reporting date for its inquiry into Corporate Insolvency from 30 May 2023 to 12 July 2023

[Source: Parliamentary Joint Committee on Corporations and Financial Services Inquiry]

Risk Management

Top Story | Sailing through headwinds: Australian equity capital markets look to a changing climate in 2023

MinterEllison has released an article offering insights from a recent industry roundtable on the outlook for equity capital markets amid a range of current challenges (and opportunities) including the ongoing renewable energy transition.

You can access the full text here.

Top Story | Proposed reforms to Australia's modern slavery regime

- The government has tabled the final report of the independent review into the operation of the Modern Slavery Act 2018 (Cth) (MSA).
- The Report includes 30 recommendations to improve the legislation including (among others):
  - lowering the reporting threshold from $100M to $50M
  - amending the Act to require entities have a due diligence system in place
  - introducing penalties for non-compliance with statutory reporting requirements
  - proposing functions for the federal Anti-Slavery Commissioner. For clarity, the government has previously announced plans/funding to establish the Anti-Slavery Commissioner. The 2023/4 Federal Budget included funding ($8.0 million over 4 years from 2023–24 and $2.0 million per year ongoing) to establish an Anti-Slavery Commissioner

A full list of recommendations is included at p11 of the Report.

- The government has not yet formally responded to the recommendations, and has said it will consult with stakeholders in formulating its response. No timeline has been given for this to occur.
- MinterEllison has released an article outlining the key recommendations and the outlook for business. You can access the full text here.

In Brief | Modern Slavery: UN-backed Report puts the number of people worldwide trapped in modern slavery at approximately 50 million, 41,000 in Australia

[Sources: 2023 Global Slavery Index]

UK Regulator 'provisionally finds' that five banks broke competition law on UK bonds

- UK regulator, the Competition and Markets Authority (CMA) has 'provisionally' found that five banks - Citi, Deutsche Bank, HSBC, Morgan Stanley and Royal Bank of Canada - 'unlawfully exchanged sensitive information regarding UK government bonds [specifically, gilts and gilt asset swaps] in one-to-one online chats'.
- According to the CMA's statement:

  'By unlawfully exchanging competitively sensitive information rather than fully competing, the banks involved in these arrangements could have denied the full benefits of competition to those they traded with – including, among others, pension funds, the UK Debt Management Office (which sells gilts by auction), and ultimately HM Treasury and UK taxpayers'.

- The CMA emphasises that the findings are provisional only and that no assumption should be made that any of the banks have broken the law.
- The CMA's investigation is ongoing. At this stage, Deutsche Bank self-reported its involvement and both Deutsche and Citi have admitted to participating in the alleged one-to-one conversations that apply to them. HSBC, Morgan Stanley and Royal Bank of Canada have not admitted any wrongdoing.

- If the CMA concludes that any one of the banks that have so far not admitted any wrongdoing have engaged in anti-competitive conduct then the regulator will publish an infringement notice and may issue a fine/fines.

  [Source: CMA media release 24/05/2023]

PwC: Firm issues open letter

In an open letter, PwC Acting CEO Kristin Stubbins issued a public apology on behalf of the firm for 'sharing confidential government tax policy information and for betraying the trust placed in us'.

The letter also confirms:

- PwC will release the full findings and recommendations of the independent review of the firm's governance, accountability and culture, after its completion in September 2023.
- Leadership changes at the firm including the appointment of two independent, non-executive directors to the PwC board and the exit of the Chairs of the Governance Board and its designated risk committee. This follows the resignation of CEO Tom Seymour on 8 May 2023 and the subsequent resignations of two other Executive Board members from their leadership roles.
- Nine partners (who have not been named by the firm) have been placed on leave, pending the outcome of PwC's own ongoing investigation.
- Arrangements in place to 'ringfence' the provision of services to Federal government departments and agencies. This includes establishing separate governance and oversight arrangements for this work by the end of September. The firm has said it will consult with the government on these arrangements including timing and process.

On the question of releasing the names of the individuals named in the emails released by the Senate on 2 May 2023, the letter comments:

> 'There has been an assumption by some that all those whose names have been redacted must necessarily be involved in wrongdoing. That is incorrect. Based on our ongoing investigation, we believe that the vast majority of the recipients of these emails are neither responsible for, nor were knowingly involved in any confidentiality breach. We have and will continue to take appropriate action against anyone who is found to have breached confidentiality or failed in their leadership duties'.

Separately, Treasury Secretary Stephen Kennedy confirmed in his 30 May Opening statement to the Economics Legislation Committee reiterated that Treasury has referred the matter to the Australian Federal Police (AFP) to consider commencement of a criminal investigation.

[Source: PwC Open Letter 29/05/2023]

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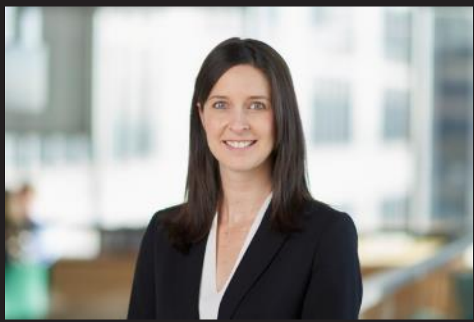

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