Extension of Environmental Transparency for U.K. Standard Listed Companies

Nov 22, 2021

Reading Time : **2 min**

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Background

PMB 36 comes after the FCA announced its new environmental, social and governance (ESG) strategy at COP 26, which included as one of its key actions the need to "enhance climate-related financial disclosures." Before that, the FCA had already introduced "comply or explain" requirements relating to the recommendations of the Taskforce on Climate-Related Financial Disclosures (TCFD) for premium—but not standard—listed U.K. companies in Listing Rule 9.8.6R(8). Such disclosures took effect with respect to premium listed companies for financial years beginning from January 1, 2021, meaning that we will see the first relevant full year disclosures as part of the 2022 reporting cycle.

In June 2021, the FCA produced a consultation paper expressing an intention to broaden the scope of the existing disclosure requirements beyond Listing Rule 9.8.6R(8) to most issuers of standard listed equity shares (excluding investment entities and shell companies).

PMB 36

In PMB 36, the FCA summarizes the level of transparency that such standard listed companies will be expected to comply with. Fundamentally, it involves extending the "comply or explain" requirements applicable to premium listed equity issuers relating to TCFD recommendations to the relevant standard listed issuers under a proposed Listing Rule 14.3.27R. It explains that the FCA's supervisory strategy will involve, among other things, (i) reviewing annual financial reports, (ii) regulatory intervention where companies are failing to supply appropriate climate-related disclosures for investors and (iii) encouraging stakeholders to notify the FCA of any areas of concern.

The body with primary responsibility for compliance will be the Financial Reporting Council (FRC), as the body with existing oversight of listed companies' compliance with their accounting obligations. The FRC will include consideration of compliance with TCFD disclosures as part of their regular accounting review processes. In the initial implementation period it seems that the FRC will encourage issuers to remedy more minor and technical failures to comply with the new rules by way of corrections to subsequent reporting and without the need for further disclosure. More serious infractions may be reported to the FCA.

Where no TCFD-related statement is included in an annual report at all, the issuer will be expected to promptly publish the missing TCFD-related statement through a Regulatory Information Provider (RIS) announcement. Failure to comply with such a request will almost certainly result in more severe regulatory intervention and penalties.

Commencement and Enforcement

It is expected that proposed Listing Rule 14.3.27R will apply for financial years for relevant standard listed companies beginning on or after January 1, 2022, so that the first relevant full year disclosures will be made as part of the 2023 reporting cycle.

Generally, the FCA can fine and censure listed companies and their directors if they contravene FCA-enforced regulations. Serious breaches can lead to a suspension of securities from listing.

Conclusion

The FCA is due to publish a technical note elaborating on the content of PMB 36. However, from what has already been published, it is clear that the extension of TCFD-related disclosures is on track for most standard listed companies and such issuers need to appraise themselves of the new requirements if they have not done so already, and implement processes to ensure compliance with these new disclosure rules. It is also expected that similar disclosure regimes will be extended in due course to larger nonlisted U.K. companies, investment entities and asset managers.

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