

## New diversity and inclusion reporting requirements for UK listed companies

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On 20 April 2022, the UK Financial Conduct Authority (FCA) announced new rules requiring listed companies to report information and disclose against targets regarding the representation of women and ethnic minorities on their boards and executive management. These rules will apply to premium and standard listed companies for accounting periods starting from 1 April 2022.

The FCA's new rules are included in a [policy statement](#) (*PS 22/3*) summarising feedback to consultation proposals published by the FCA last year that were intended to increase transparency by establishing better, comparable information on the diversity of listed companies' boards and executive management.

The new rules, which are summarised below, apply to UK and overseas-incorporated issuers with equity shares or certificates representing equity shares admitted to the premium or standard segment of the FCA's Official List (including closed-ended investment funds and sovereign controlled companies but excluding open-ended investment companies and shell companies).

### Annual comply or explain diversity statement

New Listing Rules require in-scope companies, as an ongoing listing obligation, to:

- include a statement in their annual report setting out whether they have met specific board diversity targets (listed below) as at a chosen reference date within their accounting period; and
- if they have not met these targets, explain why.

The specific targets are that:

- at least 40% of the individuals on the company's board of directors are women;
- at least one of the company's senior board positions (Chair, Chief Executive Officer, Senior Independent Director or Chief Financial Officer) is held by a woman; and
- at least one member of the company's board is from a minority ethnic background (i.e., excluding those listed by the Office for National Statistics as coming from a White British or other White ethnic background).

### Annual numerical diversity data disclosure

Alongside the annual narrative disclosure summarised above, new Listing Rules also require in-scope companies to publish in their annual report numerical data on the: (i) sex or gender identity; and (ii) ethnic diversity of their board, senior board positions and executive management in a standardised table format (as at the same reference date selected for the narrative disclosure). There is flexibility in the format for reporting on sex or gender identity in order for companies to reflect their own approach to data collection and the terms which they use. For example, companies will be

able to add to the categories of 'women' and 'men' to include 'non-binary' or other gender identities when reporting on gender.

In-scope companies are also required to explain their approach to collecting the numerical data for the table disclosure. The FCA expects the relevant explanation to include the method of collection and/or source of the data and, where the data has been collected on the basis of self-reporting, a description of the questions asked. Moreover, the FCA expects that companies take a consistent approach to data collection, both:

- in respect of the individuals being reported on; and
- in respect of both the narrative and numerical diversity disclosure requirements.

Where an in-scope company has members of its board or executive management situated overseas and local law prevents the collection and/or publication of relevant data about them, the new rules allow the relevant company to instead explain the extent to which it is unable to make the numerical disclosure (e.g., the company could explain that it was prevented by law from collecting data on ethnicity).

## Optional additional annual financial report disclosures

In addition to the required disclosures listed above and to provide further context, the new Listing Rules include guidance that an in-scope company may also wish to include the following in its annual report:

- a brief summary of any key policies, procedures and processes, and any wider context, that it considers contribute to improving the diversity of its board and executive management;
- any mitigating factors or circumstances which make achieving diversity on its board more challenging (e.g., the size of the board or the country where its main operations are located); and
- any risks it foresees in being able to meet or continue to meet the FCA's board diversity targets in the next accounting period or any plans to improve the diversity of its board.

## Corporate governance statement

The FCA has also made a change to the Disclosure Guidance and Transparency Rules governing the content of the corporate governance statement which relevant issuers must publish on an annual basis. Under the amended rules, an in-scope company is required to disclose in its corporate governance statement:

- a description of the diversity policy applied to its remuneration, audit and nomination committees (in addition to that applied to its administrative, management and supervisory bodies); and
- how its diversity policies address wider diversity characteristics such as ethnicity, sexual orientation, disability and socio-economic backgrounds (supplementing those aspects the rule already references (age, gender and educational and professional backgrounds)).

## Implementation timing and future approach

The FCA's new rules summarised above require in-scope companies to make the relevant disclosures in relation to accounting periods starting on or after 1 April 2022. This means that the first disclosures will start to appear in annual financial reports that are published from around Q2 2023 onwards. Nonetheless, the FCA encourages issuers to consider making the relevant disclosures on a voluntary basis for earlier periods, in particular for accounting periods starting on or after 1 January 2022 and expects that investors would positively receive such enhanced transparency. The FCA has further confirmed that it will review its diversity and inclusion rules within three years to assess whether the nature and level of its targets remain appropriate and sufficiently ambitious.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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