

UK FCA Publishes New Reporting Requirements for Extractive Industries -- Financial Conduct Authority

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The requirements mandate that UK-listed companies that operate in the extractive industries sector make public disclosures relating to payments made to governments.

Background

On 26 November 2013, Directive 2013/50/EU (the Transparency Directive Amendment Directive or TDAD) took effect, which implements certain changes to the EU Transparency Directive. Among these changes was the creation of a new obligation for listed companies that operate in the extractive or logging industries to make annual disclosures of payments made to governments in the countries in which they operate. There was an obligation under the directive for member states to introduce those obligations into national law within two years.

On 28 August 2014, the Financial Conduct Authority (FCA) published Consultation Paper CP14/17 (the Consultation Paper) relating to the implementation of these requirements in the UK, with the intention of aligning this with the implementation of the country-by-country reporting requirements in Chapter 10 of Directive 2013/34/EU (the Accounting Directive). On 2 January 2015, the FCA published Policy Statement PS15/1, titled "Early Implementation of the Transparency Directive's Requirements for Reports on Payments to Governments" (the Policy Statement). The Policy Statement reports on the conclusions drawn from feedback on the Consultation Paper and sets out the final rules governing the disclosure obligations. The rules have been implemented by the Disclosure and Transparency Rules (Reports on Payments to Governments) Instrument 2014, pursuant to which amendments have been made to the Prospectus Rules and the Disclosure Rules and Transparency Rules (DTRs) in the FCA Handbook. The new reporting requirements are set out in the new DTR4.3A. These requirements, with the related country-by-country reporting requirements set out in Chapter 10 of the Accounting Directive, will apply for financial years beginning on or after 1 January 2015.

New Rules

The new rules will apply to all companies active in the extractive or primary forest logging industries that are

- issuers of securities admitted to trading on a regulated market (where the UK acts as home Member State) and subject to the DTRs;
- listed companies that are required by the Listing Rules of the UK Listing Authority to comply with DTR4 as if they were issuers for the purposes of the DTRs; and
- issuers of securitised derivatives that are required by the Listing Rules (LR19.4.11BR) to comply with DTR4 as if they were issuers for the purposes of the DTRs.

DTR4.3 provides that such companies must prepare a report annually on payments made to governments for each financial year. Such reports must be made public within six months of the end of the relevant financial year and must be prepared in accordance with Chapter 10 of the Accounts Directive (under DTR4.3A.7(1)). In its guidance to the new rules, the FCA has confirmed that, if the report is prepared in accordance with the Reports on Payments to Governments Regulations 2014 (i.e., the regulations implemented by the Department for Business, Innovation and Skills to implement Chapter 10 of the Accounting Directive), it will be considered to comply with DTR4.3A.7(1). However, the FCA has indicated that it will not impose a prescribed format for such reports.

Reports on payments to governments will be treated as regulated information for the purposes of the Transparency Directive, and accordingly, the reports will need to be disseminated through a Regulated Information Service (RIS). However, rather than an issuer being obliged to publish its report via an RIS in unedited full text, the FCA is considering whether an RIS announcement that contains a link to the report on a company's website (as well as sending the report to the National Storage Mechanism) should satisfy the publication requirements in DTR4.3A. In addition, the report will need to be made available on a company's website pursuant to the amended DTR6.3.5(3).

A new sanctions regime will be introduced under the TDAD. However, because the remaining changes that the TDAD will introduce have yet to be implemented, rather than introduce a new sanctions regime early purely in relation to the new DTR4.3A, the FCA has confirmed that until the TDAD is implemented, the FCA will continue to use the existing sanctions regime contained in the Transparency Directive.

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