

## Governance in brief

Your summary of the latest corporate governance developments



### Headlines

- FSA fines Woolworths £350,000 for failing to notify the market of inside information
- FRC issues updated Combined Code
- FSA issues new rules on corporate governance statements and audit committees

### FSA fines Woolworths £350,000 for failing to notify the market of inside information

**In Brief:** The FSA has handed out a £350,000 fine to Woolworths for failing to notify the market about a variation to the terms of a major supply contract to one of its subsidiaries. The FSA regards the continuing obligation requirements of the Disclosure Rules and Listing Principles as a fundamental protection for shareholders. Observance of the continuing obligations is essential to the maintenance of an efficient, fair and orderly market in securities and to maintaining confidence in the financial system.

The Final Notice makes it clear that the following factors were taken into account when determining the financial penalty:

- Woolworths' internal processes failed to identify in a timely fashion the need to consider itself whether the effect of the Variation was inside information, even though its Board was made aware of the potential impact shortly before the Variation was executed, and senior company officials received a copy of it on the day it was signed; and
- Woolworths failed adequately to take professional advice in relation to its disclosure obligations.

In addition AIM company Meridian Petroleum plc has been censured for breaching AIM Rule 11 in that the company repeatedly failed to disclose price-sensitive information to the market without delay in respect of operational problems facing the company.

Directors can learn the following lessons from these cases:

- Ensure that a regular feature of the board decision process is the question "Does this constitute insider information?"
- Consider the information from the perspective of the investor deciding whether to purchase, sell or hold shares – would knowledge of the information have a significant impact on that decision?
- Document the discussion arising from the above points and the rationale behind any decisions taken.
- Keep advisers informed of all developments on a timely basis and take advice as appropriate.
- Review public announcements carefully and be satisfied they reflect all information available to the company at the time of making the announcement.

Date: 12 June 2008

Source: Financial Services Authority

**Further info:** Deloitte Corporate Governance Update 'Inside out – the importance of identifying and disclosing price-sensitive information July 2008'  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/056.shtml>

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### FRC issues updated Combined Code

**In Brief:** Further to the FRC's review of the impact and implementation of the 2006 Combined Code, an updated Code has been issued. This updated version includes two amendments to the 2006 Code:

- to remove the restriction on an individual chairing more than one FTSE 100 company; and
- to allow the chairman of a smaller listed company (outside the FTSE 350) to be a member of the audit committee where he or she was considered independent on appointment.

The revised Code takes effect at the same time as new FSA Rules implementing EU requirements relating to corporate governance statements and audit committees (see below). The revised Code and new Rules will apply to accounting periods beginning on or after 29 June 2008. In practice this means most companies will begin to apply them in 2009, and will report against them for the first time in 2010.

**Date:** 27 June 2008

**Source:** The Financial Reporting Council

**Further info:** <http://www.frc.org.uk/corporate/combinedcode.cfm>

### FSA issues new rules on corporate governance statements and audit committees

**In Brief:** Mandatory rules on corporate governance statements and audit committees have been issued by the FSA. Following amendments to the EU Fourth and Seventh Directives, the FSA has introduced new rules into the Disclosure and Transparency Rules on corporate governance statements and audit committees. These rules are applicable for periods commencing on or after 29 June 2008.

The requirements apply to all companies incorporated in an EU Member State and whose securities (equity or debt) are traded on a regulated market in the EU. Such companies will have to include a corporate governance statement in their directors' report referring to:

- the corporate governance code that the company has decided to apply or is subject to under the law of the Member State in which it is incorporated;
- an explanation as to whether, and to what extent, the company complies with that code. To the extent that a company departs from the code, the company should explain from which parts of the code it departs and the reasons for doing so;
- a description of the main features of the company's internal control and risk management systems in relation to the financial reporting process;
- major shareholdings and related matters already required by the Takeover Directive; and
- a description of the composition and operation of the company's administrative, management and supervisory bodies and their committees.

The rules make it clear where there is overlap with the existing Combined Code and state that companies complying in full with the relevant provisions of the Code will satisfy the requirements of the new Disclosure and Transparency Rules.

A company may elect that, instead of including its corporate governance statement in its directors' report, the information required may be set out:

- in a separate report published together with and in the same manner as its annual report; or
- by means of a reference in its directors' report to where such document is publicly available on the company's website.

Under the new rules, companies whose securities are traded on a regulated market in the EU are also required to have a body which is responsible for performing the functions detailed below. At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing. The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.

The company must ensure that, as a minimum, the relevant body should:

- monitor the financial reporting process;
- review and monitor the independence of the statutory auditor, and in particular the provision of additional services to the company;
- monitor the effectiveness of the company's internal control, internal audit where applicable, and risk management systems; and
- monitor the statutory audit of the annual and consolidated accounts.

The company must make a statement available to the public disclosing which body carries out the functions detailed above and how it is composed. This statement can be included in any corporate governance statement.

**Date:** 27 June 2008

**Source:** Financial Services Authority

**Further info:** [http://www.fsa.gov.uk/pages/Library/Policy/Policy/2008/08\\_06.shtml](http://www.fsa.gov.uk/pages/Library/Policy/Policy/2008/08_06.shtml)

### Time to take action

- Ensure board consideration is given to the lessons learned from the Woolworths case detailed above.
- Be careful to make reference to the appropriate version of the Combined Code when providing compliance statements and if implementing either of the new relaxations to the 2006 Code early recognise that this will be a breach of the 2006 Code.
- Review the new FSA rules on corporate governance statements and audit committees to determine what steps will need to be taken to meet these rules when they come into force for your company.

### On the horizon

- Revised Smith Guidance to be issued

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