

April 27, 2022

# Mandatory Diversity Targets for U.K. Listed Issuers

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## Changes to U.K. Listing Rules and Disclosure Guidance and Transparency Rules

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### SUMMARY

On April 20, 2022, the U.K. Financial Conduct Authority (“FCA”) published its final policy decision on revising the U.K. Listing Rules (“LRs”) and Disclosure Guidance and Transparency Rules (“DTRs”) to improve transparency on the diversity of boards of directors and executive management of U.K. listed issuers.<sup>1</sup>

Among other things, the revised rules will introduce under the LRs an annual “comply or explain” reporting regime with respect to board-level diversity targets prescribed by the FCA. They will also require the annual disclosure of certain diversity information on the board and executive management in a prescribed format. The new rules will apply to most issuers with a premium or standard listing of equity shares, or certificates representing equity shares, on the main market of the London Stock Exchange. In addition, the corporate governance statements of such issuers will now need to describe the diversity policies applied to key board committees. The new rules come on the heels of new diversity rules imposed on Nasdaq-listed companies and by the state of California (the latter of which were recently declared unconstitutional).<sup>2</sup>

The text of the revised LRs and DTRs is set out in FCA Policy Statement PS22/3, available [here](#). The new requirements will apply to in-scope issuers for accounting years beginning on or after April 1, 2022. As a result, the first reporting under them will be due in 2023 (and, in some cases, not until 2024). However, the FCA has encouraged U.K. listed issuers whose financial years began before then (from January 1, 2022) to consider voluntarily reporting under the new rules in relation to their current accounting period.

## AMENDMENTS TO THE LISTING RULES

Chapters 9 and 14 of the LRs are being amended to require any in scope issuer (as described below) to publish in its annual financial report a “comply or explain” statement on whether it has achieved the following diversity targets, as at a chosen reference date within its accounting period:

- At least 40% of the board are women.
- At least one of the senior board positions (Chair, Chief Executive Officer (CEO), Senior Independent Director (SID) or Chief Financial Officer (CFO)) is a woman.
- At least one member of the board is from a minority ethnic background (as set out in categories used by the U.K. Office for National Statistics).

If an issuer does not meet one or more targets, it will be required to disclose that it has not done so and explain the reasons for not meeting those targets.

In addition, issuers will be required to disclose numerical data on the sex and gender identity and ethnic diversity of the board, senior board positions (Chair, CEO, SID or CFO) and the most senior level of executive management. The new rules prescribe the information to be included and the tabular format in which it must be set out.

The revised LRs also include guidance stating that a U.K. listed issuer may also wish to include the following in its annual financial reports to provide further context:

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

The new rules will apply to issuers (wherever incorporated) with a premium or standard listing of equity shares, or certificates representing equity shares, on the main market of the London Stock Exchange. Closed-ended investment funds and sovereign controlled companies are included, but open-ended investment companies and “shell companies” are excluded.<sup>3</sup>

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## AMENDMENTS TO THE DTRS

DTR 7.2.8AR currently requires any in-scope issuer to describe in its corporate governance statement the diversity policy applied to its administrative, management and supervisory bodies (such as its board). If no such policy is applied, issuers are required to explain why that is the case.

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This rule will be amended so as to expand the reporting requirements to cover the diversity policies of the remuneration, audit and nomination committees. It will also be amended to indicate that reporting on diversity policies may consider additional diversity characteristics than under the current rules. Presently, only age, gender, and educational and professional backgrounds are specifically listed as characteristics to which diversity policies may have regard. Ethnicity, sexual orientation, disability and socio-economic background will now be added to that indicative list.

As above, this requirement, by operation of the Listing Rules, applies to overseas issuers (wherever incorporated) with a premium or standard listing of equity shares, or certificates representing equity shares, on the main market of the London Stock Exchange. It also applies to U.K. incorporated companies with equity or debt securities admitted to trading on any U.K. regulated market.

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### ENDNOTES

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- <sup>1</sup> Financial Conduct Authority, PS 22/3, “Diversity and inclusion on company boards and executive management”, April 20, 2022, *available at* <https://www.fca.org.uk/publication/policy/ps22-3.pdf>.
- <sup>2</sup> See Sullivan & Cromwell, Nasdaq Proposes Board Diversity Requirements (December 14, 2020), *available at* <https://www.sullcrom.com/files/upload/SC-Publication-Nasdaq-Proposes-Board-Diversity-Requirements.pdf> and Sullivan & Cromwell, California State Court Declares AB 979 Unconstitutional (April 5, 2022), *available at* <https://www.sullcrom.com/files/upload/sc-publication-california-state-court-declares-ab-979-unconstitutional.pdf>.
- <sup>3</sup> A “shell company” is an issuer whose: (i) assets consist solely or predominantly of cash or short-dated securities; or (ii) predominant purpose or objective is to undertake an acquisition or merger, or a series of acquisitions or mergers.

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