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Shareholder Activism in the U.K.—*an Introduction*

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This article provides a summary of certain principles of English law and United Kingdom (U.K.) and European regulation applicable to U.K.-listed public companies and their shareholders that may affect shareholder activism, namely (*i*) stake-building; (*ii*) shareholders' rights to require companies to hold general meetings; (*iii*) shareholders' rights to propose resolutions at annual general meetings; and (*iv*) recent developments in these and related areas.

I Own or Am Intending to Acquire Shares; Do I Need To Make Any Disclosures?

The U.K.'s disclosure obligations (under the U.K. Listing Authority's Disclosure and Transparency Rules [the DTRs]) apply once a person (or persons acting in concert) has (or together have) a holding of 3% or more of a listed company's total voting rights and capital in issue (either as a shareholder or through a direct or indirect holding of relevant financial instruments) unless the relevant listed public company enters an "offer period" (as to which, see below). Thereafter, any changes to that holding that cause the size of the holding to reach, exceed or fall below every 1% above the 3% threshold (*i.e.* reaching, exceeding or falling below 4, 5 or 6%, etc.) must be disclosed by the relevant shareholder(s) to the listed company and the listed company is then obliged to announce those disclosures to the market. In addition, the disclosure obligations extend to the disclosure of voting rights held by a person as an indirect holder of shares, such as where a person is entitled to acquire, dispose of, or exercise the voting rights attaching to shares (for example, via synthetic holdings or contract(s) for difference). It is important to note that any indirect holdings must be aggregated and separately identified in the relevant notification(s).

The Form & Timing of Disclosure

There are rules on the form of notification that must be used and the information that it must contain. In particular, notifications must provide details of all the parties to any agreement (formal or informal) which obliges them to adopt, by the concerted exercise of the voting rights they hold, a common policy towards the management of their holdings (although there is no requirement to disclose the detailed nature of that agreement). The notification must be made to the relevant listed company as soon as is possible and in any case within two trading days in the case of U.K. companies and four trading days in the case of non-U.K. companies. For shares admitted to trading on the London Stock Exchange's main market for listed securities, the notification must be made using the Financial Conduct Authority's (FCA's), formerly the Financial Services Authority (FSA), which replaced the FSA on 1 April 2013, Form TR-1.

Further Comments

The disclosure obligations cannot be avoided by connected third-parties (such as a financial adviser or related company) acquiring shares as part of an arrangement under which they would ultimately be sold to or otherwise under the control of the principal. A person will be an indirect holder of shares for the purpose of the notification requirements where voting rights are held by a third-party with whom that person has concluded an agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the target in question. Such an agreement does not necessarily need to be in writing or indeed legally binding. While *ad hoc* discussions and understandings which might be reached between institutional shareholders in relation to particular issues or corporate events, which is often referred to as collective engagement by institutional shareholders, are unlikely to be caught,[1] an understanding reached in relation to planning or agreeing how to vote at an upcoming (and possibly future) annual general meeting (AGM) or general meeting may well start to fall on the wrong side of the line, and accordingly could result in an aggregation of the relevant shareholdings for disclosure purposes. For these reasons, the standards promulgated by the U.K.'s Hedge Funds Standards Board suggest that all such arrangement be documented and reported to the compliance function. As the issues arise for the specific facts of each case, it is important to seek advice at an early stage.

Finally, a disclosure should also be made to the relevant listed company by a person who reaches, exceeds or falls below the thresholds as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the listed company (for example, following an unrelated corporate action, such as a share buy-back). In terms of penalties, noncompliance with the DTRs, while not a criminal offense, may attract significant financial penalties and/or a public censure. It should be noted that, if a U.K.-listed public company enters an "offer period", disclosures of any dealings are then required by any person who is interested (directly or indirectly) in 1% or more of any class of securities of the company in question (pursuant to Rule 8 of the Code [as defined below]). This rule catches a wider category of instruments than the DTRs, including, in particular, options and long derivative positions.

I Have a Significant Shareholding: What Actions Can I Take?

Calling Shareholder Meetings

A shareholder (or shareholders acting together) can use the statutory procedure set out in Part 13 of the Companies Act 2006 (the Companies Act) to requisition a general meeting. The directors of a company are required to call such a general meeting once the company has received requests to do so from shareholders representing at least 5% of such of the paid-up capital of the company that carries the right to vote at general meetings (excluding any paid-up capital held as treasury shares). If multiple shareholders together requisition the meeting (such that their holdings are aggregated for the purposes of reaching the relevant threshold) the requests must be in substantively the same form (either on multiple substantially identical requests or by way of the relevant shareholders submitting a single joint-requisition).

The Content of the Request, Timing & Shareholder Statements

The relevant shareholder's request must state the general nature of the business to be dealt with at the meeting and may (but is not required to) include the text of a resolution (or resolutions) intended to be moved at the meeting. Assuming the necessary formalities are complied with, the directors are required to call the meeting within 21 days of the requisition, with the meeting to be held not more than 28 days after the date of the notice of the meeting. There are additional restrictions on the timing for the meeting for "quoted companies" under the European Union's (EU's) Shareholder Rights Directive 2007/36/EC, as implemented in the U.K. (the SRD), as implemented by amended provisions in the Companies Act. For quoted companies, there must be at least 14 or 21 clear days—depending on whether the company has passed the relevant enabling resolution at its most recent annual general meeting—between the date on which the notice of meeting is circulated and the date of the meeting itself.

Shareholders representing at least 5% of such of the paid-up capital of the company as carries the right of voting at general meetings (excluding treasury shares) also have a right to require the circulation to shareholders of a statement (limited to 1,000 words) relating to the matters referred to in a proposed resolution to be tabled at the relevant meeting (or the business to be dealt with at the relevant meeting more generally) by the company. Any such statement must be received by the company at least seven days before the general meeting. It is generally the case (although there are certain limited exceptions) that the shareholder(s) who request the circulation of the statement will be responsible for the costs associated with its circulation, unless the company resolves otherwise. In such circumstances, the company is not bound to comply and circulate the statement unless there is deposited with or tendered to it, not later than seven days before the meeting, a sum reasonably sufficient to meet its expenses in doing so (again, unless the company resolves otherwise).

Annual General Meetings of Public Companies

In addition to the right to require resolutions to be put before a general meeting requisitioned under the Companies Act for that purpose, shareholders of public companies can require specific resolutions to be put before a listed company's AGM. The ownership threshold for such an action is the same as for requisitioning a general meeting as described above, although a notice requiring such motion(s) must identify the actual resolution(s) to be tabled at the AGM, rather than merely requiring the discussion of general business, as is permitted at a requisitioned general meeting. In addition, the resolutions must be received by the company at least six weeks before the relevant AGM or, if later, by the time that the notice of AGM is circulated by the company.

I Have a Significant Shareholding: What Resolutions Can I Propose (or Block)?

Binding, Advisory & Conditional Resolutions

Generally, specific resolutions, which have the result of effecting particular transactions, appointments or events relating to a company, elicit greater shareholder interest and engagement and are much more effective in terms of shifting shareholders out of the apathy that can be prevalent in companies with disparate (especially retail investor-heavy) registers. Nonetheless, it is also possible for a shareholder (or shareholders acting together) to propose, and a company to pass, both advisory (sometimes referred to as "directive") and conditional resolutions. An advisory resolution is one whereby shareholders either (*i*) request the directors undertake an action as an indication of their collective wishes (*i.e.* the wishes of a majority of shareholders that have voted on the relevant resolution(s)) but do not formally require the directors to do so (even though they may be able to as a matter of company law); or (*ii*) pass an ordinary resolution to request the directors to do something which they would be obliged to do had the resolution been proposed and passed as a special resolution.

A resolution which is intended to be binding on the directors will often need to be passed as a special resolution as such a resolution will override the provisions of the company's constitution that give the board of directors the power to manage the business of the company. As compared to ordinary resolutions, special resolutions require a higher voting threshold in order to be passed (75%, rather than a simple majority) and require compliance with additional formalities in terms of notice requirements and restrictions on the ability of directors and shareholders to make amendments to them prior to or at the vote at the relevant meeting.

It is also possible for shareholders to propose and approve both advisory and binding resolutions that in each case are conditional upon the occurrence of another event and/or the passage of time (although it is essential that the occurrence of the event(s) upon which the relevant resolution is conditional is capable of being objectively and irrefutably determined). Accordingly, it is not possible to make a resolution conditional upon the occurrence of some vague or indeterminate event (although that is not to say the triggering event cannot itself be subject to some other approval); the issue is one of certainty. Typical examples of such conditional resolutions include the adoption of new constitutional documents following a capital reorganization or the application for the listing of the shares in a de-merged business following the dividend *in specie* of that business to shareholders.

Blocking Resolutions

A shareholder or shareholders holding 25% or more of a U.K. company can restrict certain actions by the company by preventing special resolutions being passed, the most relevant being (*i*) an off-market purchase by the company of its own shares (although it should be noted that recent developments in U.K. company law may impact the position going forward);[2] (*ii*) a reduction of capital (a technique commonly used to increase distributable reserves, subject to approval by the court in the case of public companies); and (*iii*) a company altering its constitution.

Similarly, a shareholder or shareholders holding 25% or more of a U.K. public company will be able to block a takeover of that company being effected by way of a court approved scheme of arrangement (as such a scheme will require special resolutions to be passed). In practice, a shareholder or shareholders holding less than 25% of a company's shares may also be able to prevent special resolutions being passed (because generally only votes cast by shareholders present in person or by proxy at the relevant shareholder meeting are counted, and it is unlikely that all shareholders will attend and/or vote).

Finally, it should be noted that a shareholder or shareholders holding 10% or more of a U.K. company will likely be able to block a takeover of that company by way of a contractual offer as the bidder would not be able to use the "squeeze-out" mechanism under Part 28 of the Companies Act to remove that shareholder or shareholders and would likely not want to be left with a significant minority. Accordingly, such a shareholding is likely to give the relevant shareholder "a seat at the negotiating table" in relation to any takeover offer.

Executive Remuneration

Since 2002, U.K. company law has required listed public companies to produce and table a directors' remuneration report, which is voted on by shareholders at the company's AGM. Although that vote is, at the moment, purely advisory and therefore a barometer of shareholder satisfaction, it has resulted in a number of high-profile director resignations where there has been a significant vote against the remuneration report. The U.K. Government is proposing to make changes to the directors' remuneration report requirements for public companies, beginning October 1 such that (*i*) the directors' remuneration report will be split into two separate parts (one, an implementation report, detailing how the company's current policy has been implemented during the previous financial year; and two, a policy report, setting out the company's current remuneration policies for executives and restrictions on their salaries and benefits); (*ii*) the implementation report will remain subject to a shareholders' advisory vote every year and the policy report will be subject to a binding vote (by way of ordinary resolution) either whenever changes are proposed or at least every three years; and (*iii*) a company's approach to exit payments must to be included in the future remuneration policy and therefore made subject to the binding shareholder vote. These changes are likely to give significant shareholders greater ability to influence public companies' remuneration policies and structures and give those shareholders a more tangible way to influence boards and press for change should they be dissatisfied with the performance and/or effectiveness of current management.

Is the U.K. Takeover Code Relevant?

As defined in the City Code on Takeovers and Mergers (the Code), persons acting in concert are persons who, pursuant to an agreement or understanding (formally or informally), cooperate to obtain or consolidate control of a company or to frustrate the successful outcome of another offer for the company, with control for these purposes meaning the acquisition of 30% of the voting rights in the target company. If persons are deemed to be acting in concert there are important implications in terms of obligations to make a mandatory offer under Rule 9 of the Code and the price at which any offer for the relevant company is required to be made.

The Code presumes that certain categories of person will be acting in concert unless the contrary is shown; however, the Panel Executive (which oversees enforcement of the Code) has confirmed[3] that it does not believe that the intention or effect of Rule 9 and the mandatory bid requirements is to act as a barrier to collective shareholder action (such as minority shareholders jointly seeking to influence the board or other similar activist strategies). That said, persons who collectively work to requisition a general meeting to consider a "board control-seeking" resolution (or threaten to do so) will usually be presumed to be acting in concert, and almost certainly will be where they have aligned themselves prior to the announcement of the requisition. A resolution will not normally be considered to be "board control-seeking" unless it seeks to replace the existing directors with directors who are not independent, and have a significant relationship with the requisitioning shareholder(s), with the result that the shareholder(s) would effectively be in a position to control the board. It will also not normally be considered to be "board control-seeking" if the directors that are proposed to be appointed are independent non-executive directors and the requisitioning shareholder(s) are seeking their appointment in order to improve the company's corporate governance.

The Panel Executive has also specified some situations which will not, of themselves, lead to a concert part relationship, being: (*i*) discussions between shareholders about possible issues which might be raised with a company's board; (*ii*) joint representations to a company's board by shareholders; and (*iii*) an agreement by shareholders to vote in the same way on a particular resolution at a general meeting (but see the potential disclosure issues noted above). In addition, a proposed change to the manner in which a company is managed that does not involve changes to the board will not normally be considered to be "board control-seeking" unless the activist shareholders make it known that "board control-seeking" proposals will be put forward if the management changes are not implemented.

The Panel Executive will presume shareholders putting forward "board control-seeking" proposals to be acting in concert with each other, their supporters as at that date and also with the persons proposed to be appointed as directors of the company concerned. While the act of coming together may not trigger a requirement to make a mandatory offer if those "acting in concert" together hold less than 30% of the relevant company's voting rights, they must be careful not to do so by further stake-building. It is important therefore to be able to identify the size of the aggregate of the shareholdings concerned. It is also often the case that appropriate standstill arrangements are entered into. It is interesting to note that, although it is technically possible for the proposal of a "board control-seeking" resolution to result in the relevant shareholders having to make a mandatory offer for the company concerned, since the introduction in 2002 into the Code of the current provisions on collective shareholder action, the Executive has not required any such mandatory offer to be made.

Are Insider Dealing & Market Abuse Regimes Relevant?

The Nature of Possible Offenses

One of the most important questions to be considered prior to the acquisition of any shares is whether purchasing shares (in whatever quantity) will amount to an offense under the criminal insider dealing and market abuse legislation. Offenses can be committed both when an individual in possession of inside information deals in securities and when that person encourages others to do so.

Insider Dealing

Under the Criminal Justice Act 1993 (the CJA) an offense is committed if an insider (*i*) deals in price-affected securities when in possession of inside information; (*ii*) encourages another to deal in price-affected securities when in possession of inside information; and/or (*iii*) discloses inside information otherwise than in the proper performance of his employment, office or profession. However, it should be noted that all three offenses can only be committed by an individual and only if he holds "inside information" as an "insider." For these purposes, "inside information" means information which (*i*) relates to particular securities or to a particular listed company or companies (and not to securities or listed companies generally); (*ii*) is specific or precise; (*iii*) has not been made public; and (*iv*) if it were made public, would be likely to have a significant effect on the price of any securities. There are a number of important uncertainties here: there is no definition or guidance in the CJA on what "specific or precise" means and/or what will amount to a "significant effect on the price of securities."

Market Abuse

In addition to the criminal regime under the CJA, the market abuse regime applies to both persons and bodies corporate, whether authorized or unauthorized, who abuse a prescribed market. Market abuse can be committed by either one person acting alone or two or more persons acting jointly or in concert. The relevant behavior may be on-market or off-market and there are seven types of such behavior, the most commonly referenced being engaging in insider dealing, misuse of information, and misleading behavior and market distortion. There is also an offense relating to the dissemination of false or misleading information. It is important to note that the market abuse offenses, in particular, can be committed without the any securities having been acquired and/or any profit having been made.

Of particular relevance for activist shareholders is the market abuse offense of "misuse of information." This offense is committed where behavior (not falling within the market abuse insider dealing or improper disclosure behaviors outlined above) is (*i*) based on information which is not generally available to those using the market, but which, if available to a regular user of the market, would be, or would be likely to be, regarded by him as relevant when deciding the terms on which transactions in qualifying investments should be effected; and (*ii*) likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behavior reasonably expected of a person in his position in relation to the market. There is a good deal of subjectivity here in that an offense is only committed if the relevant conduct constitutes a failure to observe the standard of behavior reasonably expected of market participants in the relevant position.

Also of particular relevance to activist shareholders may be the offense of engaging in "manipulating transactions." This is where behavior consists of effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant market), which either give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments and/or secure the price of one or more such investments at an abnormal or artificial level. In terms of what constitutes "legitimate reasons" for the purpose of the relevant provisions, it is accepted under the FCA's Code of Market Conduct that where a transaction (or series of transactions) are entered into so as to open a new position (rather than closing out a position to remove the relevant person's exposure to the relevant market) and where the transaction complies with the rules of the relevant prescribed markets (for example, as regards reporting and disclosure in accordance with the DTRs, as described above) those facts are strong evidence that the relevant conduct has been undertaken for "legitimate reasons" and so falls outside the scope of the relevant market abuse regime.

Issues for Activist Shareholders, etc.

The most obvious concern in relation to a purchase of shares in the market by a stake-building activist is in circumstances where, through its enquiries prior to the purchase, it has received, and is therefore in possession of, nonpublic information from the company, or an insider such as a director, at the time of the purchase that would, if made public, be likely to significantly affect the company's share price. However, the FCA has also warned that an activist strategy could itself constitute inside information. While it is clear that dealings by an activist on the basis of its own intentions and knowledge of its strategy would not be regarded as market abuse, there are other circumstances which give rise to concerns, such as situations where (*i*) a person trades on the basis of knowledge of another investor's intentions or strategy; (*ii*) warehousing arrangements are used to avoid disclosures to the market that might otherwise be required; and (*iii*) false rumors and expectations are generated to take advantage of the resulting share price movements.

Of course, once an activist's presence on a company's share register is publicly identified and its activist strategy is publicly known, any potential market abuse issues are normally addressed because they should cease to be price-sensitive. This the main reason why activists, once relevant shareholdings have been acquired, often use "open letters" to garner support from other shareholders, as opposed to private approaches to them before publicly launching an activist campaign.

Penalties & Enforcement

If a person is found guilty of market abuse the FCA may (*i*) impose an unlimited fine; (*ii*) censure that person publicly; and (*iii*) apply to the court for a restitution order. The market abuse civil regime supplements (and, to a certain extent, cuts across) the criminal regime for insider dealing under the CJA and the criminal offenses of misleading statements and market manipulation under § 397 of the Financial Services and Markets Act 2000 (FSMA). However, the civil market abuse regime under FSMA is wider in scope than the criminal regime and, in particular, effectively extends an insider dealing regime into the commodities and energy markets. The existence of both a criminal and a civil market abuse regime means that various legislative provisions need to be considered in relation to any one set of facts (taking into account the differing burdens of proof) and may also mean the FCA has a choice as to whether to pursue a criminal prosecution or take civil action in respect to the same behavior. Against this legislative background, in recent years the FCA has adopted an increasingly robust approach to the investigation and prosecution of the market abuse offenses and this approach is widely expected to continue. The FCA's approach on market abuse is generally perceived to be merging into a broader focus on standards of market conduct, and the trust and integrity issues. Market participants should note that the FCA has recently secured criminal prosecutions for insider dealing (which it had not often prosecuted) and issued a number of high-profile civil sanctions and sizeable fines under the market abuse regime.

Should I Engage with the Current Board or Other Activists/ Shareholders?

Engaging with the Current Board and the U.K. Stewardship Code

Engaging with the current board of the company and establishing a dialogue should normally be seen as a precursor to any more aggressive "activist" strategies, the emphasis being to protect and enhance overall shareholder value. The U.K. Stewardship Code was introduced in 2010 and sets out good practice for institutional investors seeking to engage with boards of U.K.-listed companies. The purpose of the Stewardship Code is to encourage dialogue between investors and the boards of U.K.-listed companies when shareholders intend to use their powers to make a company take notice of issues of concern to them. It is therefore expected that a board will engage with all significant shareholders on a regular basis to offer an appropriate forum for their views to be aired. In particular, it would be common for the board of a U.K.-listed company to engage in dialogue with significant shareholders before they reach or exceed the 3% and 5% thresholds referred to above and to gauge their interest before major transactions involving the company are undertaken; the intention of the Code being that the relationship between the board and significant shareholders is one of co-operation and constructive dialogue to maximize overall shareholder value. The Stewardship Code operated by the Financial Reporting Council (FRC) and adherence by shareholders to it is voluntary. The FRC encourages all institutional investors to publish a statement on their website of the extent to which they have complied with the Code, and to notify the FRC when they have done so and whenever the statement is updated (a "comply or explain" approach). The FRC also encourages each institution to name in its statement an individual who can be contacted for further information and by those interested in collective engagement.

Engaging with Other Shareholders

An activist shareholder looking to agitate for change will first commonly use public records (both from the company's publicly disclosed information and/or previous shareholder filings, including DTR disclosures) to assess the size of other shareholdings and gauge (from public statements as mentioned above) the likelihood of various shareholders or groups of shareholders supporting its proposals or strategy.

The next stage will often then be to engage with other significant shareholders. However, there should be heighted sensitivity with respect to possible market abuse issues in relation to "joint strategies" by activists. An activist may seek another's support in numerous different ways, including (*i*) requesting permission to use its name in discussions with the company concerned; (*ii*) seeking a letter of support in relation to the activist's proposals or strategy; (*iii*) agreeing to a joint or coordinated stake-building strategy; (*iv*) seeking and agreeing to non-binding letters of intent or legal undertakings to support a shareholder vote (and, perhaps, requiring the other to retain is shareholding ahead of the relevant shareholder meeting); and (*v*) requesting the other to join in and co-sign a meeting requisition to propose agreed resolutions, (which may also constitute "board control-seeking" proposals, as referred to above).

When engaging with other shareholders, the activist will need to confirm their willingness to be "wall-crossed" (*i.e.,* be provided with potentially price-sensitive information) with respect to the activist's proposals or strategy. If they are so willing, any discussions prior to an announcement of a general meeting requisition or other matters that could constitute material price-sensitive information should take place within the confines of appropriate confidentiality/nondisclosure and, possibly, standstill arrangements.

Activists and other shareholders who come together to agree to a joint or coordinated stake-building strategy in relation to the company in the context of also adopting a joint activist strategy need to be fully aware of both the likely disclosure consequences of doing so and also the Code implications of potentially being treated as acting in concert. Appropriately confidential discussions in connection with a properly disclosed and organized stake-building exercise are, of themselves, unlikely to constitute market abuse (although it is essential that such confidentiality be maintained and that information flows be carefully monitored) nor, of itself, is the actual stake-building (provided the disclosure rules are appropriately complied with). Those involved need to be continually mindful of triggering a requirement to make a mandatory offer under the Code if they, and others "acting in concert" with them, together acquire 30% or more of the company's voting rights.

As mentioned above, once the general meeting requisition or other matters of concern have been announced and are then public knowledge, by definition, the information shared and/or that was the subject matter of the relevant discussions should cease to be price-sensitive, cleansing the parties and freeing them to deal in the relevant securities as they wish. That said, any discussions postannouncement of a requisition, for example seeking nonbinding letters of intent or legal undertakings to support a shareholder vote, should be done on the basis of "equality of information" to all shareholders, a principle enshrined in the DTRs.

The Company is Being Mismanaged; What Other Actions Can I Take?

Derivative Claims

Any shareholder can make a derivative claim in the name of the company, for a wrong done to the company, in order to obtain relief on behalf of the company. However, a claim can only be made for negligence, default, breach of duty and/or breach of trust of a director. The director(s) in question need not have benefitted personally for such a claim to be made. The shareholder must file evidence establishing the basis for a claim and obtain the court's permission to continue. However, the court will not give permission if the impugned action has or is likely to be authorized by the majority of independent shareholders.

Unfair Prejudice

Any shareholder can apply to court if a company's affairs are being conducted in a manner that is unfairly prejudicial to some or all of the shareholders in that company, including the applicant. If the claim is proved, the court may take such action as it thinks fit. The types of order that could be issued include, but are not limited to, an order regulating the future conduct of the company or, most commonly, providing for the sale or purchase of shares in the company by the complainant. In contrast to a derivative action, an unfair prejudice claim is designed to compensate the particular aggrieved shareholder(s).

NOTES

1. *See* the guidance from the Financial Services Authority of August 19, 2009.
2. In mid-February 2013, the U.K. Government published its response to the Nuttal Review on company own-share buybacks (*available at* https://www.gov.uk/government/consultations/employee-ownership-and-share-buy-backs-consultation-on-implementation-of-nuttall-review-recommendations). In particular, the Government has elected to adopt a recommendation to change the requirement under the Act to obtain a special resolution for an off-market share purchase to an ordinary resolution. It is expected that this change will come into effect through secondary legislation during the course of 2013. In relation to public companies, it is possible that the Institutional Investor Committee (which includes bodies such as the Association of British Insurers) may nonetheless request that a special resolution be passed (as it does currently in relation to on-market share purchase authorities).
3. *See* the Panel's Practice Statement 26 dated September 9, 2009 (*available at* http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/ps26.pdf).