

# Board and senior executive diversity

## New annual report disclosure requirements for listed companies

The Financial Conduct Authority (FCA) has published changes to the Listing Rules (LRs)<sup>1</sup> and the Disclosure Guidance and Transparency Rules (DTRs)<sup>2</sup>, together with a policy statement on diversity and inclusion on company boards and executive management (PS22/3), following a consultation process (CP21/24)<sup>3</sup>.

The rule changes apply to annual reports for financial years starting on or after 1 April 2022. However, the FCA encourages voluntary early reporting, in particular for financial years starting on or after 1 January 2022.

The changes overlap with, and build upon, the recommendations of the [FTSE Women Leaders Review](#)<sup>4</sup> and the [Parker Review](#)<sup>5</sup>, which are widely supported by institutional investors, and continue to gain momentum.



1. The new LR applies to UK and overseas 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'.
2. The changes to the DTRs apply to UK issuers with securities admitted to UK regulated markets and, through the LRs, to certain overseas listed companies, subject to exemptions for small and medium-sized companies.
3. The FCA published the LR and DTR changes and its policy statement on 20 April 2022. The consultation opened on 28 July 2021 and closed on 20 October 2021.
4. Recommendations include: (a) a voluntary target for FTSE 350 boards and leadership teams to achieve a minimum of 40% women's representation by the end of 2025; and (b) an expectation that FTSE 350 companies should have at least one woman in the chair, SID and/or CEO or finance director role by the end of 2025.
5. Targets (on a comply or explain basis) are at least one director from a minority ethnic group on: (a) each FTSE 100 board by 2021; and (b) each FTSE 250 board by 2024.



## Changes to the Listing Rules<sup>6</sup>

### Board diversity targets (comply or explain) – mandatory new disclosure

The new LRs require a company to disclose whether or not it has met specific board diversity targets as at a reference date chosen by the company (within the year under review)<sup>7</sup>. Failure to meet one or more targets will not be a breach of the LRs, but a company that does not meet all targets is required to state which target(s) it has not met, and explain the reasons why not. The targets are:

- at least 40% of the board are women;
- at least one senior board position (chair, CEO, SID or CFO) is held by a woman; and
- at least one board member is from a minority ethnic background<sup>8</sup>.

A company will also need to disclose any changes to the board between the chosen reference date and the date on which the annual report is approved, if such changes have affected the company's ability to meet the targets.

### Numerical data (board and senior management) – mandatory new disclosures

The new LRs also require a company to publish, in a standardised table format<sup>9</sup>, numerical data as at the company's chosen reference date regarding the ethnic background and the gender identity or sex of the individuals on its board and in senior board positions (chair, CEO, SID and CFO) and executive management<sup>10</sup>.

In addition, the new LRs require a company to explain its approach to collecting the data used in both the comply or explain disclosure statement and the numerical data reporting tables, which should be consistent and include collection methods and data sources.

There is flexibility in the format of the prescribed table for reporting on women's representation, with the option to report on either sex or gender identity<sup>11</sup>.

There is also flexibility for companies with directors or senior executives overseas, where local law prevents the collection or publication of relevant data; in such cases, a company may instead explain the extent to which it is unable to make the disclosures.

### Contextual information – optional new disclosure

The LRs include guidance<sup>12</sup> on additional disclosure a company may wish to include for further context:

- 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 (for example, 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 specified board diversity targets in the next financial year, or any plans to improve the diversity of its board.

### Location of LR disclosures

There is flexibility as to the location of the disclosures within the annual report. A company might choose to include the information in its strategic report, where it already discloses certain diversity statistics as required by the Companies Act 2006<sup>13</sup>. Alternatively, it might choose to include the information in its corporate governance statement, alongside the diversity disclosure recommended by the UK Corporate Governance Code 2018<sup>14</sup> and required by the DTRs<sup>15</sup>.

6. LR 9.8.6(9)-(11) & LR 14.3.33.

7. We anticipate many companies will choose their financial year end, to align with the reference date for their statutory diversity disclosure under s. 414C(8)(c) Companies Act 2006. If a company changes its chosen reference date from one year to the next, it will need to explain why.

8. Defined by reference to categories recommended by the Office for National Statistics (ONS) excluding those listed as coming from a white ethnic background.

9. The format is set out in LR 9, Annex 2.

10. Executive management is defined as the executive committee or most senior executive or managerial body below the board, including the company secretary. This is aligned with the definition of senior management under the UK Corporate Governance Code.

11. Note that s.414C(8)(c) Companies Act 2006 anticipates reporting based on sex (and does not refer to gender identity).

12. LR 9.8.6JG & LR 14.3.37G.

13. s.414C(8)(c) Companies Act 2006.

14. Provision 23.

15. DTR 7.2.8A.



## Changes to the Disclosure Guidance and Transparency Rules<sup>16</sup>

### Diversity policy – enhancement of existing disclosure

The updated DTRs anticipate that a company's disclosure on its diversity policy will be extended so that it:

- includes a description of how the company's diversity policy applies to the key committees of the board (the remuneration, audit and nomination committees) - as well as how it applies to the board;
- covers wider diversity characteristics such as ethnicity, sexual orientation, disability and socio-economic background - in addition to age, gender, educational and professional background.

### Numerical data (board and committees) – optional new disclosure

The updated DTRs suggest that a company may, where it considers appropriate, include numerical data on the diversity of both the board and key board committees covering diversity characteristics referred to in its diversity policy<sup>17</sup>.

### Location of DTR disclosures

The disclosures should be included in the corporate governance statement part of the annual report<sup>18</sup>.

## Next steps

A company can prepare for its new reporting obligations by taking the following action:

- Review existing diversity policies, at board and committee level, including any diversity targets currently set, and consider whether updates are needed.
- Review succession plans for board and senior executive roles, and the mechanisms to recruit and retain diverse talent at all levels of the business.
- Review current diversity data collection processes, seeking advice where necessary, and consider whether any changes or improvements are required.
- Prepare for annual report disclosures, noting that the FCA encourages early reporting. Consider how the new or enhanced disclosures will build upon existing diversity disclosures in the annual report.

16. DTR 7.2.8A & C.

17. We anticipate some companies may be reluctant to include diversity data beyond the data required by the LR. Companies may be particularly hesitant to include data on board committees, on the basis that the typically small number of people on such committees may make any potentially sensitive information more individually identifiable.

18. DTR 7.2.1.

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. This document is for general information purposes only and is not intended to provide legal or other professional advice.