

Calling all directors and company secretaries - Was your annual report filed with the NSM in XHTML format, correctly tagged, within the four month deadline after your year end?

It is well understood that listed companies must publish their annual report within four months of their year end. However, in its Primary Market Bulletin 49 issued last week, the FCA has shot across the bows of listed companies to remind them that the four month publishing deadline imposed by DTR 4.1.3R captures both the release of the regulatory announcement **and** the filing of the annual report with the National Storage Mechanism ("NSM") and that this is something they will view with greater seriousness going forward.

Are they being filed with the NSM at all?

The FCA notes instances where the annual report, whilst available on other publicly available platforms has not been filed with the NSM, a breach of DTR 6.2.10R.

Has it been announced they have been filed with the NSM, using the appropriate wording?

A listed company must announce that the annual report has been uploaded to the NSM DTR 6.3.5(1A)(1)R. This can be either as part of the annual report announcement or a standalone announcement and it must include a link to the NSM website DTR 6.3.5(3)R. Again, the FCA notes instances where this is not happening

Is the annual report and accounts in XHTML format and correctly tagged?

DTR 4.1.15R requires annual reports to be prepared in XHTML format, whilst DTR 4.1.17 requires the annual report to tag those items specified in DTR 4 Annex 1.

The FCA stated they have noticed a **low compliance rate** with the preparation and filing of annual reports that meet these two requirements.

Consequences

1) Suspension of shares

It is widely understood that if a listed company does not release its annual report announcement within the four month deadline the shares will automatically be suspended. The FCA are clearly implying that failure to file a correctly tagged and formatted annual reports with the NSM with the four months will also trigger a automatic suspension of shares and that they will take a stronger view on non-compliance with NSM filings going forward.

2) Breach of Listing Principle 1 and DTR fines

The FCA has historically preferred to go for the immediate action of suspension of shares to address a company's failure to publish its annual report within four months, however it could view it as a breach of Listing Principle 1, which requires listed companies to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable them to comply with their obligations and in turn impose a fine for a breach of this and the relevant disclosure rules..

Actions

1) Timetabling

Timetabling of the production of the annual report has always been important, however it is imperative that future timetabling allows sufficient time for the annual report to be formatted and tagged appropriately.

Finalising and releasing the annual report on the last possible day has never been a desirable option but for a variety of reasons it has often occurred. This no longer can be viewed as an

choice, as the practicalities of arranging board approval, auditor sign off and then finalising the tagging all in one day, runs a high risk of failure. Therefore, the absolute final date for board and auditor approval should be bought forward a few days from the four-month deadline, to ensure sufficient time can be given to formatting, tagging and filing the annual report with the NSM and thereby not running the risk of the company's shares being suspended from trading.

2) Format and tagging

Most companies use third party service providers to undertake the formatting and tagging, noting the FCA's comments it would be wise to have them confirm that the formatting and tagging they perform is to the FCA's required standards.

3) Review internal checklists/processes

Review any internal checklists and processes to ensure they capture the filing of the annual report with the NSM.

4) Review template wording for annual report announcements

Check the standard wording included in the annual report announcement to ensure it includes reference to the annual report being filed at the NSM and a link to the NSM website.

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