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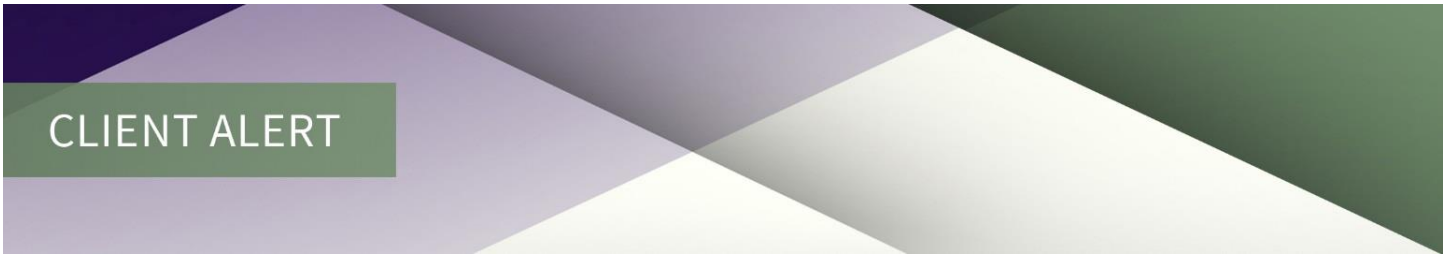

Public Disclosure Practices for Solvency and Financial Condition Reports: an Emerging Consensus?

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Under Europe's Solvency II "Pillar 3" reporting requirements, (re)insurers in the EEA (**Firms**) are obliged to publish at least annually a report on the solvency and financial condition of their group. (Re)insurance groups started publishing these solvency and financial condition reports (**SFCRs**) this year and this memorandum reviews the public company disclosure practices that are emerging in relation to publication of the SFCRs, particularly by Firms that are part of insurance groups with securities listed on U.S. or EEA exchanges.

Specifically, listed Firms will also need to consider their disclosure obligations under relevant securities laws. This is particularly important as the SFCR may contain categories of material information that have not yet been considered or vetted by GCs, CFOs, compliance officers and other members of public company disclosure committees.

SFCRs and FCRs

The SFCR must be prepared at a group level for Firms whose group supervisor is located in the EEA or at a solo level for the individual (re)insurers in the EEA whose group supervisor is located in a third country. Firms whose group supervisor is located in a Solvency II "equivalent" jurisdiction need only comply with the rules applicable to group regulation in that jurisdiction. The report must follow a prescribed structure as required in Annex XX to Commission Delegated Regulation 2015/35 (the **Delegated Regulation**), although there has been some divergence in practice regarding the level of detail into which the SFCRs go. We expect a greater market consensus on the appropriate level of detail to develop over the coming years.

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Article 380(k) of the Delegated Regulation mandates that the prudential regime of "equivalent" jurisdictions must require the group to disclose publicly, at least annually, a report on the solvency and financial condition of the group. For example, Firms whose group supervisor is the Bermuda Monetary Authority are required to publish financial condition reports (**FCRs**) in accordance with the Bermuda Insurance (Public Disclosure) Rules 2015, which broadly replicate the requirements found in the Delegated Regulation.

Timing for Disclosure

Each year, a Firm must disclose its SFCR no later than 14 weeks after the Firm's financial year-end. Disclosure would usually be by publication of the SFCR on the Firm's website, where it must remain available for inspection for at least five years after the disclosure date. "Equivalent" jurisdictions have imposed similarly tight deadlines, with the Bermuda FCR to be published four months after the Firm's financial year-end. The SFCR requires approval by the relevant regulator and the process for obtaining this is likely to have directed the precise timing of the publication in this initial year. It may be the case that, as Firms and regulators become more familiar with the form and content of this reporting, the process will be accelerated in future years so that the disclosure can dovetail with a Firm's general reporting calendar.

Regulation FD Considerations for U.S. Public Companies

Firms with a U.S. exchange listing should consider whether they have an obligation to disclose pursuant to Regulation Fair Disclosure (**Regulation FD**) under the rules of the Securities and Exchange Commission. Under Regulation FD, U.S. public companies generally must disclose material information to all investors at the same time, which can be achieved by furnishing to or filing with the SEC a Form 8-K disclosing that information or instead disseminating it through another method (or combination of methods) that is reasonably well designed to provide broad, non-exclusionary distribution of the information to the public. Given the Solvency II obligation to publish the SFCR on its website, Firms that are part of U.S. public company groups should consider publishing a Form 8-K at the same time to make investors aware of the publication, if it determines that the information in the SFCR could be material.

Information is generally considered material if there is a substantial likelihood that a reasonable shareholder would consider it important. With this materiality threshold in mind, some U.S. listed groups with only small EEA operations may take the view that the SFCRs of their EEA subsidiaries are not material in the overall context of their global operations. However, as noted above, Firms whose group supervisors are outside the EEA where similar Solvency II equivalent reports are required should still consider the materiality of such group reports (e.g., Bermuda's FCRs).

Additionally, we note that the filing deadline for SFCRs comes shortly after the publication deadline for annual reports on Form 10-K. Accordingly, the information in the SFCR may not be deemed material if it is substantially the same as information in a recently published annual report. In the future, we expect that some U.S. public companies may also seek to publish their SFCRs at the same time as their annual reports, given the close proximity of the deadlines. On the other

hand, when determining materiality, we note that equity research analysts historically have been interested in information similar to that contained in the SFCR (or FCR) and certain regulatory capital ratios of EEA subsidiaries may well constitute material information. We anticipate that in the future there will be a greater number of U.S. public companies who will announce the publication of their SFCRs under Regulation FD as analysts and shareholders pay more attention to these new reports.

Disclosure Considerations for EEA Listed Groups

Firms with a listing on a securities exchange within the EEA should consider how the disclosures impact the market abuse regime. Under the Market Abuse Regulations, Firms with their securities admitted to trading on a regulated market in the EEA are obliged to publicly disclose "inside information" as soon as possible through the relevant regulatory news service (**RNS**). In relation to EEA listed Firms, inside information is information of a precise nature that has not been made public and if it were made public, would be likely to have a significant effect on the price of the issuer's securities. In general, EEA listed Firms' EEA business will tend to be a larger component of their overall results as compared to non-EEA Firms and, accordingly, we believe EEA listed Firms are more likely to have to make a disclosure through the RNS simultaneously with publication of the SFCR on their website.

Conclusion

We note that in both the U.S. and the EEA, a trend appears to be developing whereby listed Firms consider that the website publication of their SFCR should be announced via Form 8-K or an RNS. Firms' announcements typically disclose the link to the SFCR (or FCR) as published on their websites.

We also note that there has been relatively little market commentary on the information contained in SFCRs published in 2017, suggesting that Pillar 3 of the Solvency II regime may be causing fewer compliance difficulties in practice for the (re)insurance industry than many industry commentators initially feared. We do, however, expect an emerging market consensus to develop over time on the level of detail to be contained in these reports.

In summary, we note that disclosure committees of public companies will want to review the information contained in their SFCRs and decide on a case-by-case basis whether additional disclosure, through Form 8-K or an RNS, is indeed required or otherwise desirable to inform securities holders.

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