Crowe Clark Whitehill LLP
Statutory Audit Services Market Investigation
Response to the Notice of Possible Remedies

Area for comment	*Crowe Clark Whitehill response*
Remedy 1: Mandatory tendering **Issues for comment 1** Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) What an appropriate time frame for requiring mandatory tendering might be, given the bounds suggested above?	We believe that the requirement for mandatory re-tendering must be considered along with the requirements for mandatory rotation. It also makes sense to consider the rotation requirements for audit engagement partners since those provisions also exist to ensure independence. We consider that the requirement for a FTSE 350 company to put the audit out to tender at least every 10 years as set out in the UK Corporate Governance Code is appropriate. This period allows a single rotation of the audit engagement partner under Ethical Standards (assuming the partner served a full term). If a shorter period was deemed to be necessary then we would support the seven year option.
(b) Whether and for what reason the measure may be subject to 'comply or explain' implementation?	We believe that the UK Corporate Governance Code works well in setting a benchmark for companies to follow and yet allowing them flexibility to adapt the Code to suit their individual circumstances provided they explain their reason for non-compliance. We consider that this model would be suitable therefore to address the requirement for audit tendering. Additionally we would recommend including in the Code examples of what would, and what would not, be considered to be an appropriate explanation for non-tendering of the audit so as to provide Audit Committees with additional guidance in this respect. We recommend, however, that the CC reviews the implementation of the Code in this respect and the quality of any explanations provided to assess whether it is having the desired impact on the audit services market. We also consider that this model is likely to allow for a greater degree of flexibility than including a tendering requirement in statute would.
(c) How a valid 'tender' and its constituents should be defined, including whether and how best to provide access to relevant information on an 'open book' basis?	A valid 'tender' should result in an environment where the tender process should be efficient for all parties with equal access to key relevant data, management and the Audit Committee (AC); there should also be a prospect of success for all participants. We have serious reservations as to the appropriateness of having an 'open book' process whereby the other participants in the audit tender can have access to the incumbent auditor's work papers.

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	This could have wide ranging implications, time and cost and may not assist significantly in the process. In particular, we believe an 'open book' process may be detrimental to competition and audit quality as it may stifle innovation within audit firms and also deter any auditors from developing their own audit response to particular audit risks. Audit tenders at the current time do not have such access and we do not believe there is evidence to suggest that the tender process is impaired because of it. We do believe it important that all participants in the tender process should have access to the same information and this should include key reports and communications between the incumbent auditor and those charged with governance of the entity.
(d) What costs and benefits would arise as a result of this remedy?	If there was mandatory re-tendering without mandatory rotation then there would be a significant risk that this remedy would not be effective as there would be no restriction on the incumbent being reappointed. Tender processes are, by their very nature, costly for audit firms and the audit entity especially in terms of the time and effort needed if the process is to be conducted properly. A particular challenge will be to see if this remedy will reduce the current barriers for entry for non-Big 4 firms.
(e) What should be the requirements for phasing in this remedy? For example, those companies with the longest period since last tender may be required to tender first within a specified period.	If tendering were to be a mandatory requirement the phasing should be based on the period since the audit was last put out to tender with a two year period for compliance for those companies who have not held a tender in the last 10 years. This will ensure some priority is given to those companies with the longest period since the last tender.
(f) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	The remedy does not seek currently to identify how ACs might identify which audit firms should take place in the tender process. The Big 4 firms are dominant in the FTSE 350 and it is not clear at the moment how mandatory re-tendering alone will change this position. The challenge for the non-Big 4 firms is that although they may be presented with opportunities to take part in tender processes, unless a number of tenders result in a non-Big 4 firm being appointed, then they may not be willing to take part in tenders, which consume significant time and resources, with little or no prospect of being successful in the process. The challenge is ensuring such a measure actually does reduce current barriers rather than being perceived to do so.

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Remedy 2: Mandatory rotation of audit firm **Issues for comment 2** Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) What an appropriate time frame for requiring mandatory rotation might be, given the bounds suggested above and how this might relate to mandatory tendering periods if this were also to be pursued?	In conjunction with the recommendations made on mandatory re-tendering, we favour a mandatory rotation period which has some congruence with the period for mandatory re-tendering. Accordingly, based on our response (a) to Remedy 1, in we would support a maximum period of 20 years. If the period for mandatory re-tendering was set at seven years, we would favour a maximum rotation period of 14 years. Our rationale is based on allowing an incumbent auditor to have no more than one successful re-tender (assuming that the maximum re-tender period was used).
(b) Should any such measure be subject to a waiver from the regulator (FRC) if a company's choice of auditor was substantially constrained and how would such a waiver operate?	We believe a waiver should be available to allow for short term circumstances where a change in auditor would be severely disruptive in reality we would expect it to be granted only in exceptional circumstances. An AC should be responsible for managing a transition of audit firm and this should include ensuring that a choice of auditor is always available and, where that choice is constrained, that suitable firms are not barred from acting for ethical reasons. Where a waiver is granted, which should be for a maximum of two years, we would expect the auditor's reappointment to be subject to subject to a 75% vote by the shareholders and the AQRT to review the file annually as an additional safeguard. It would be necessary to define how this would work in practice and what specific measures both ACs and Regulators have in validating the appropriateness of any waiver in specific circumstances.
(c) How a valid 'tender' and its constituents should be defined as a prelude to rotation, including whether and how best to provide access to relevant information on an 'open book' basis?	Please see our comments in point (c) to Remedy 1 above. .

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(d) What costs and benefits would arise as a result of this remedy?	These are difficult to measure and predict. The benefits may be lower audit fees, an increase in actual or perceived independence and increased shareholder confidence. There is a cost associated with a change of auditors though, in particular the management time that is involved in developing the relationship with the new advisor and helping their understanding of the business. Whether there will be a positive impact on audit quality is questionable. Although a new auditor brings a new perspective and a fresh approach, there is no guarantee that they will bring additional challenge, robustness or more scepticism. The new audit firm is, after all, trying to develop a relationship that the firm will hope will last for a number of years. Arguably, the incumbent auditor may bring greater challenge and scepticism in the last years of their tenure when they are not permitted to be reappointed.
(e) What should be the requirements for phasing in this remedy? For example; those companies with the longest period since last rotation may be required to rotate first within a specified period.	These should be consistent with the requirements for mandatory re-tendering. Please see our comments in point (e) to Remedy 1 above.
(f) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	There is a challenge in ensuring this measure is effective in encouraging more competition with greater representation from the non-Big 4 firms in the audit of FTSE350 companies rather than the rotation of audits between the Big 4 firms. The CC should review the audit services market in three to five years to assess whether these measures have had the desired effect.
Remedy 3: Expanded remit and/or frequency of AQRT reporting **Issues for comment 3** Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) How the AQRT's remit should be designed in terms of enhanced scope and frequency. For example;	

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(i) How frequently should FTSE 350 company audits be reviewed (and whether this should differ between FTSE 100 and FTSE 250 companies)?	Currently, the AQRT review programme is set with reference to the audit firms rather than the company being audited. By reviewing the Big 4 firms annually a significant number of FTSE350 audits are reviewed annually although we note that this means any one company's audit is reviewed relatively infrequently. We agree that there is merit in requiring the audit of a FTSE100 company to be reviewed, say every three years and a FTSE250 company every five years. Additionally the AQRT should review the audits of systemically risky financial institutions annually in order to ensure that professional scepticism and audit quality are maintained.
(ii) Should the AQRT be required to publish FTSE 350 results separately from other Public Interest Entity results?	We concur that to publish results of reviews by reference to client type may allow a greater degree of analysis in the audit quality of not only different audits but also the different audit firms involved. An alternative approach might be for the AQRT to specifically provide comment as to whether their findings varied significantly between their review of FTSE350 and other public interest entities. The individual reports on a FTSE350 company should ordinarily be shared with management and the AC and specific disclosure by the AC of their understanding of the review and the key points arising could be considered and encouraged. It is critical that there is dialogue with the AQRT/FRC on the practicalities of any recommendations and whether they consider it will lead to an improvement in audit quality.
(iii) Should the AQRT be required to change the scope of its review and if so, how? For example; should the AQRT be required to revisit key audit judgements based on the information then available?	We believe the current process followed by the AQRT is sufficient considering they will, from time to time, focus on specific aspects across all the firms they review. This area (key audit judgments) is one such example. The suggestion that the AQRT revisits the key audit judgements although understandable does present some challenges. An audit by its very nature is founded on making judgements and forming opinions. We are concerned as to the position should the AQRT form a different opinion on an audit matter from the audit firm. There is a danger that the position adopted by the AQRT might be regarded as the appropriate judgment and if there was any difference with the view formed by the audit firm this could have a detrimental impact on the incumbent auditor. In determining any expansion of the AQRT or its scope it is important to assess where the regulatory risks and concerns are within the audit market and how the AQRT could be structured in a manner to most effectively manage these. The expansion of the AQRT should not necessarily just result in more FTSE350 files being reviewed but rather more focus in certain areas, for example financial services/banking, entities where there is greater degree of judgment/estimate within the financial

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	statements, entities more susceptible to going concern risks etc.
(iv) How could AQRT reporting be expanded to allow better comparison of Big 4 and non-Big-4 firms?	The AQRT reports in a consistent manner between the major audit firms that it reviews, regardless of whether they are Big 4 firms or non-Big 4 firms; the differentiating factor is the review cycle. One of the challenges the AQRT faces and manages well is the difference in size, structure and culture of the firms within their remit. It is important that the AQRT approaches its reporting and review in a consistent manner but in doing so some of the matters it reports on has to maintain perspective and proportionality relative to the individual firm. The key stakeholders (ACs, management, institutional investors), need to be engaged in outlining what output they require from the AQRT reporting process to ensure they have greater understanding of the non-Big 4 firms. This will be critical if those stakeholders are going to consider the non-Big 4 firms in re-tendering situations and have confidence in appointing them as auditor. This is an area the CC needs to develop further with the AQRT/FRC.
(b) How should any expanded remit of the AQRT be funded?	The assumption must be that the funding will be met potentially by the key stakeholders in the process, notably, the professional bodies, audit firms and FTSE350 companies.
(c) What costs and benefits would arise as a result of this remedy?	The costs would be in respect of the funding of the AQRT and additional time for a wider and expanded process with firms and other key stakeholders. The benefits should be to encourage more transparency of reporting, improve assurance and confidence of key stakeholders in audit firms (both Big 4 firms and non-Big 4 firms) and ultimately to contribute from constructive reporting and process to continually improving audit quality.
(d) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	We have no specific comments on this.
Remedy 4: Prohibition of contractual clauses in template documents limiting choice to the Big 4 firms	
Issues for comment 4	
Views are invited on the specification, effectiveness and proportionality of this remedy	

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and, in particular, on the following:	
(a) The range of documents to which this prohibition should be imposed and how the prohibition could be best implemented. For example: are there documents in addition to Loan Management Association lending agreements that this prohibition should cover?	We support the prohibition of any anti-competitive contractual clauses generally.
(b) What costs and benefits would arise as a result of this remedy?	We do not envisage that there would be any significant costs. The benefits should be to encourage wider choice, the ability to select firms (outside the Big 4) based upon their ability to perform specific engagements and potentially reduced costs in the provision of services. The wider benefit would be to expand and potentially increase the exposure and experience companies have of firms outside the Big 4 which can over time lead to gaining greater confidence and assurance in their abilities.
(c) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	We have no specific comments on this.
Remedy 5: Strengthen accountability of the External Auditor to the AC	
Issues for comment 5	
Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) How this remedy could be practically specified and implemented? For example, what change to ACC availability and remuneration would be necessary for ACCs to take on an enhanced role effectively? How should this measure be specified to	This remedy is difficult to implement in practice. As financial statements are the responsibility of executive management they will remain the first point of contact when identifying material audit issues as their explanations will be important in determining whether a matter identified is an issue or not. In order to best implement the spirit of this remedy, the role of an ACC should be enhanced by

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avoid circumvention?	ensuring they attend any clearance meetings with executive management or discussions with them over material audit issues .Auditing standards should be amended to require the AEP to monitor whether the ACC has been informed of all such meetings. Additionally the ACC should receive copies of all findings reports, or other documents of material significance, submitted to executive management, whether in draft or final form, to ensure they are fully appraised of all matters arising Again, auditing standards should be amended to ensure that the AEP provides such information to the ACC.
(b) Whether this remedy could be implemented as an extension to the current guidance on the role of the AC? How this could be implemented without affecting the current collective legal obligations of the directors of a company?	We are concerned that aspects of the remedy will blur the distinction between executive and non-executive management. We believe that executive management should remain as the principal decision-makers in the day to day running of the business but accept that there may need to be greater liaison with the AC and the ACC in :
(c) What costs and benefits would arise as a result of this remedy?	There will be extra costs, potentially, for companies if there needs to be an adjustment to remuneration for ACCs and other members of ACs if their role expands. Additionally, there may need to be greater interaction between the executive and non-executive management. The benefits could be better and clearer communications between the auditors and the ACCs.
(d) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	We have no further comment to make.
Remedy 6: Enhanced shareholder-auditor engagement	
Issues for comment 6	
Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) What are considered to be the most effective means of enhancing shareholder engagement on audit and financial reporting	We support measures that increase the engagement between auditors and shareholders. Principally, we believe this should be through more effective communication between auditors and ACs and improving the reporting in annual reports and financial statements. We are open to suggestions that

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issues?	there could be greater involvement with auditors at AGMs and for certain votes in connection with audit-related matters requiring enhanced levels of support.
(b) Suggestions as to how such means could be achieved.	There should be further engagement with the shareholder community to establish whether the measures being improved would be likely to result in any significant improvement in auditors' engagement with shareholders.
(c) What costs and benefits would arise as a result of this remedy?	The benefits may be improved engagement between auditors and shareholders and an improved perception of independence.
(d) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	We have no further comment to make.
Remedy 7: Extended reporting requirements—in either the AC's or auditor's report	
Issues for comment 7	
Views are invited on the specification, effectiveness and proportionality of this remedy and, in particular, on the following:	
(a) How the CC may best support the FRC in establishing enhanced reporting and whether there are other avenues, including direct measures by the CC, that should also be pursued?	Extended reporting requirements are currently being considered by both the FRC and the IAASB. We support this and have been engaged in providing feedback to this process. There needs to be further engagement with institutional investors and shareholder groups to ensure that to ensure that whatever proposals are developed will address the concerns those groups have. The CC can support the FRC in exploring this further.
(b) What should be the scope and form of enhanced reporting proposals? For example:	
(i) whether further disclosure should be made via the AC's report or the auditor's	We believe the further disclosures should be made via the AC's report and note the development of

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report;	extended reporting requirements by both the FRC and the IAASB to enhance audit report disclosure.
(ii) what the content of the additional disclosure should be. For example, should this be some form of commentary as to how the company's interpretation of the accounting standards compares with the norm; or commentary on the main topics of debate between auditor and management; or something else; and	For the AC report, there should be increased commentary around the audit process, engagement with the auditors, the areas highlighted of significant risk and judgement, the decision processes and the conclusions reached. Unless there are areas of clear disagreement of facts, we do not believe that the auditor should be making any disclosures that are not included within the Annual Report by the directors. For the auditors, we support the development currently in progress regarding the extended reporting requirements.
(iii) what guidance as to the form of the disclosure should be required.	For the AC report, guidance should continue to be developed by the FRC in consultation with key stakeholders. For the audit report, guidance is currently being developed by the IAASB regarding the format of the extended reporting.
(c) What costs and benefits would arise as a result of this remedy?	The benefit should be clearer and more effective communication of the audit process and the degree of rigour and challenge that is present therein.
(d) Whether there are any other relevant considerations to be taken into account in evaluating and implementing this remedy?	We have no further comment to make.
Remedies that we are not currently minded to consider further	
Issues for comment 8	
The CC invites views on all these possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested respondents consider may be effective in addressing the AEC we have provisionally found. Where respondents are of	Other than as noted below, we have no comment to make on the potential remedies that the CC are not minded to consider further.

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the view that these remedies could be effective, they are asked to submit evidence to support their views and in particular provide views of the costs and benefits of the measures and any other relevant factors that they consider significant to the evaluation of the measures in addressing the AEC we have provisionally identified.	
Joint or major component audit	The report of the CC has failed to address the audit of systemically risky global financial institutions. Arguably, only the Big 4 firms have the skills required to undertake these audits, giving rise to significantly reduced choice for Audit Committees when choosing auditors and an enhanced risk in the event of one of the Big 4 firms failing. In order to mitigate this risk, Audit Committees of such entities should be required to develop a contingency plan for a change in auditor in the event of a firm failing which should include ensuring that at least one firm is kept clear of any potential ethical conflicts. Further consideration should be given, by both the CC and ACs to joint or shared audit in this sector to widen the pool of expertise and reduce the impact of an audit firm failure on the UK's equity markets.
Packages of remedies **Issues for comment 9** Views are invited as to whether any particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found. Views are also sought as to whether there are any particular combinations of remedies which are likely to interact adversely in reducing effectiveness or otherwise lead to undesirable outcomes.	We support the combined remedies of mandatory tendering, mandatory rotation and prohibition of Big 4 contractual clauses. We have reservations as to whether any of these measures in isolation will increase competition to firms outside the Big 4 or whether there is a risk that they will serve to increase competition within the Big 4 from the rotation of work between them. We support remedies to increase the governance process in the engagement with auditors and the appointment of auditors and firms for the provision of non-audit services. Such changes, however, may require a further cultural shift in the role of the AC and ACC and the importance and independence this is given. We support remedies to improve the remit of the AQRT if this serves to improve audit quality, provide more confidence in the audit process and greater understanding of audit firms (outside the Big 4) and

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	their ability to undertake audit work on major companies.
Relevant customer benefits **Issues for comment 10** Views are invited on the nature, scale and likelihood of any relevant customer benefits within the meaning of the Act and on the impact of any possible remedies on any such benefits.	The relevant customer benefits should be to have wider choice, a competitively priced audit or non-audit service and an audit process that continually drives for improved audit quality, is transparently reported, is critically but constructively regulated, and enhances confidence for stakeholders in the audit process for financial reporting.