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By email and by post

Dear Dennis,

Draft Order: The Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014

Thank you for the opportunity to comment on your draft Order. Our firm is a legal advisor to listed companies and auditors on audit law and regulation and we have been following closely the developments in relation to the CC/CMA work and the EU Audit Regulation. Our comments mainly arise from our concerns about making the Order workable and clear for affected companies.

1. We are pleased that the CMA proposes to give more time for compliance by indicating the requirements will apply from 1 January 2015. We also appreciate that the CMA has moved to drop certain proposals that will in any case come into force when the EU Audit Regulation applies from 2016 (or 2017 in the case of Article 16(6)), as well as clarifying certain points around application dates and some of the interaction with the EU Audit Regulation. However, we still believe the CMA could do more to remove duplication and complexity around the interaction between its proposed Order and the EU Audit Regulation when it comes into effect. Our suggestion would be to issue the Order in two parts. The split would be based on what the EU Audit Regulation contains, such that the part that mirrors the EU requirements would fall away when the EU Audit Regulation comes into force, leaving only those elements that are additional to the EU requirements. This would deal with the overlap issues in the most efficient way. Ultimately, it would be better if all legislative requirements could end up being dealt with in the Companies Act, so that companies and auditors have the legislative requirements in one place to the greatest extent possible. We would encourage the CMA to liaise with BIS to achieve this effect if possible when the Companies Act is amended for the impact of the EU audit requirements.

2. We think that it is not fair or practical for a company that comes into the FTSE 350 to be

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immediately subject to the Order from the date in which it enters the index (see paragraph 1.3). It should instead apply to first financial year beginning on or after the date in which it enters the index. Otherwise it is difficult for a company that joins the FTSE to work out how the Order applies to it when it becomes a member in the middle of a financial year and it may not be able to comply. It might for example be just about to issue its annual report and it might be too late to change the disclosures in there in order to comply with the Order.

3. The definition in the Order of "Audit Committee Report" refers to the report "prepared in accordance with the UK Corporate Governance Code". It is not clear whether you are suggesting that the report must comply with the Governance Code requirements as to content: if it does have to be prepared in accordance with the Code requirements then that part of the Code will have become a mandatory requirement rather than a comply or explain requirement, which is not in the spirit or intention of the Code.
4. In the definition of "Audit Committee", the Order only refers to the description in the Companies Act, and we therefore assume that the reference in the Explanatory Notes to the composition requirements for the Audit Committee under the Governance Code does not mean that the composition has to be in accordance with those requirements, but again it would be better if this were made clearer.
5. In paragraph 3.1(b), 5.1(a) and 5.1(e) the use of the phrase "to the extent permissible by law and regulations" is vague and very unhelpful. If the intention is to refer to specific law or regulations, which may be different on each occasion the phrase is used, then in each case the reference should be given explicitly, so that it is clear which laws and/or regulations the CMA intended to be considered in each case.
6. It would appear that paragraph 5.2, which allows a materiality limit to be set by a company for the authorisation of non-audit services, is redundant as it would be overtaken by the EU Audit Regulation, which contains no such provision other than that in Article 5(3). Leaving this provision in place will therefore be likely to create confusion.
7. In paragraph 6.2 of the Order, there is a reference to the auditor being the subject of an Auditor Appointment "on or after 17 June 2016". Unlike the provisions in paragraph 6.1, there is no reference to a particular financial year and we think there could therefore be doubt about the time at which the Auditor Appointment is treated as having been made. Is it by reference to the start of the financial year, or by reference to when the audit letter is signed? We believe that the drafting could be amended to clarify this point as we believe that this should be by reference to the start of the financial year.
8. In part 7 on monitoring and compliance, it seems excessive to have two reporting mechanisms, one by companies and one by auditors. As we have seen with the rules on notifying why auditors have left office, this creates an unnecessary duplication of reporting and risks obscuring important information. The information can all be collated from company disclosures (and various commercial organisations already collect and publish similar information/statistics). The question of the timing of application of the new requirements is also relevant here. Does paragraph 7.1 first apply to financial years beginning on or after 1 October 2014, or on the publication of the next annual report?



9. A final minor point: the explanatory notes to the Order, and the Order itself, say that the EU Audit Regulation came into force on 17 June 2014. The Regulation actually came into force on 16 June 2014 (which is why in Article 41 (3) of the Regulation there is a reference to 16 June 2014). Article 44 of the Regulation says that it comes into force on 20th day following that of its publication in the Official Journal – it was published in the Official Journal on 27 May 2014 and the 20th day after that date is 16 June 2014. Although only a day out, it should be corrected in the Order and Explanatory Note.

Please feel free to contact us if you wish to discuss any of these matters.

Yours sincerely

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