Dear Mr Kelly

Draft Order - Statutory Audit Services

ICAEW welcomes the opportunity to comment on the draft Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014 (‘the Order’) and accompanying draft Explanatory notes published by the CMA on 24 July 2014, a copy of which is available from this link.

ICAEW is the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,500 firms and 9,300 responsible individuals under the Companies Acts 1989 and 2006.

In our view, the provisions of the Order reflect the measures indicated in the Competition Commission’s final report into its investigation into statutory audit services for large companies, in October 2013. However, we do have significant concerns over the transitional arrangements and their clarity.

1. We welcome the CMA’s alignment of the implementation dates of the Order with the relevant provisions of EU Regulation 537/2014 (the Regulation) as far as possible. Indeed we would go further and suggest that the Order simply use the EU transitional arrangements, rather than setting up some slightly different ones. It seems unnecessary and potentially confusing for the Order to include its own arrangements, albeit largely aligned.

2. In addition, while we accept that the transitional provisions in the Regulation are themselves unclear (discussed further below) we believe the explanatory notes could be made clearer. They could, for example, include a table based around auditor appointment dates, so that companies and auditors can be left in no doubt as to when the Order applies to them.

3. If our understanding of Part 6 of the Order is correct, companies who have changed auditor more recently than 11 years prior to 17 June 2014 would potentially become subject to the Order well before companies that changed auditor a longer time ago. We understand that this is part of tying in the Order to the Regulation, and that this is one interpretation that applies to the transitional provisions of the Regulation. However, the European Commission has not, at the time of writing, issued any formal interpretation and there are other, more logical interpretations (for example, that of the Federation des Experts Comptables Europeens’). In
our view this supports the suggestion in point 1 above that the Order merely adopt the transitional arrangements in the Regulation. Either way, we urge the CMA to revisit this interpretation.

4. We note that the CMA intends that the Order should apply to companies immediately on entry into the FTSE350 index. While this is unlikely to be an issue for previously listed companies, who will already have to apply the requirements of the Regulation, it could be an issue for companies which enter the index directly on listing. The current APB Ethical Standards include provision for the maximum duration of time an audit partner can serve on an audit engagement, to be extended in limited circumstances, including when a company becomes a listed entity.\(^i\) This recognises that a short additional period of audit continuity can be important at such a time and we believe the Order should allow a transitional period in such circumstances.

We also have a few comments on other matters:

5. We note that the CMA will have the power under article 7.2 to seek information directly from incumbent auditors. We suggest that the CMA should work with the Financial Reporting Council and the RSBs avoid duplication with the activities undertaken by those bodies. This should be explained in the Explanatory Notes.

6. On the subject of monitoring, it is not wholly clear that requesting the information specified in article 7.2 of the Order to be provided by the auditor, would be more effective than obtaining it from the company directly. Indeed, we note that the explanatory notes refer to part 7 placing an obligation on FTSE350 companies.

7. Part 9 of the Order includes a catch-all power to demand and publish any relevant information. We assume the CMA would have regard to normal document retention requirements (the Companies Act 2006 for example, specifies six years for accounting records for public companies), and the demands of commercial sensitivity.

We would be happy to discuss the points raised further.

Yours sincerely

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\(^i\) Available at http://www.fee.be/index.php?option=com_content&view=article&id=1410&Itemid=396#QUESTION18

\(^\text{APB Ethical Standard 3, paragraphs 15 and 16.}\)