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Dear Sirs

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

Deloitte LLP is pleased to respond to the Competition and Markets Authority's (CMA's) consultation on the draft Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014.

We welcome the CMA's intention to align the introduction of the Order with the coming into force of EU Regulation 537/2014. This will reduce the potential confusion over the interaction between the CMA's Order, the UK Corporate Governance Code and the EU Regulation which we have found to be causing difficulty to a number of UK companies.

Alignment of transitional provisions with EU Regulation

There has been some debate about the interpretation of Article 41(4) of the EU Regulation which may affect the drafting of Article 6.1(c) of the draft Order. We understand that the European Commission is talking to the Commission Legal Services, and that BIS are also considering the interpretation of this rule.

The interpretation reflected in the draft Order has the effect that:

- those entities with an auditor tenure of 5-10 years at 17 June 2014 will be the first to tender (for appointments from 17 June 2016-17 June 2019);
- those entities with an auditor tenure of either 4 or 20+ years at 17 June 2014 will tender for appointments on or after 17 June 2020;
- those entities with an auditor tenure of 2 or 3 years at 17 June 2014 will tender for appointments on or after 17 June 2021 or 2022 respectively;

- those entities with an auditor tenure of 1 or 11-19 years at 17 June 2014 will tender for appointments on or after 17 June 2023; and
- those entities with an auditor tenure of 0 years at 17 June 2014 will tender for appointments on or after 17 June 2024.

The effect of this is often to require that companies with the shortest auditor tenure will be the first to tender.

An alternative legal interpretation of the Regulation, counting auditor appointments for the purpose of this regulation from 17 June 2014, would mean that those audits where the auditors' tenure of 0-10 years as at 17 June 2014 would be tendered from 17 June 2024.

Given the importance of consistency with the EU requirements and the need to avoid confusion in the market we suggest that you discuss this point further with the European Commission and BIS before finalising the draft Order.

Constituents of the FTSE 350

As drafted, Article 1.3 applies the order immediately to companies that join the FTSE 350. This could be challenging where a company joins the index part way through a financial year, particularly given:

- the need for the audit committee's terms of reference to be aligned with Article 5, which may be hard to achieve mid-year; and
- the potential for an immediate audit tender to be required because the company's auditor has served more than ten years at the time of entry to the FTSE 350. This may be particularly challenging in the case of a new admission to listing which enters straight into the FTSE 350; prior to listing it is unlikely that there would have been an independent audit committee in existence to supervise an audit tender.

This could be mitigated by amending Article 1.3 as follows:

“The provisions of this Order apply to a Company if (a) it was a FTSE 350 Company on the final day of the preceding financial year [or, alternatively, at any point during the preceding financial year] and (b) it has a premium listing of equity shares as defined in the FCA's Handbook.”

Part (b) of our suggested text for Article 3.1 is necessary to avoid the Order applying to a company which was in the FTSE 350 but which delisted subsequent to a year end.

Monitoring and compliance

In our opinion, the requirement in Article 7.1 will result in a “boilerplate” statement within an Audit Committee Report which adds little to the following qualitative information which will already be provided to shareholders:

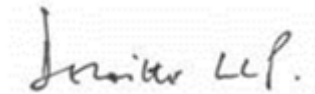
- the auditor's tenure, the date of the last tender, the policy for appointment for non-audit services and details of how the auditor's independence has been maintained (UK Corporate Governance Code provision C.3.8 supported by the FRC Guidance on Audit Committees); and
- where a tender has been deferred for more than five years, disclosure of the reasons why this is in the shareholder's interests (Article 4.1 of the draft Order).

The only extra value to the statement of compliance is confirmation that the auditor has not been in place for more than ten years without a tender; however, in each case this will now be illegal by virtue of Article 17 of the EU Regulation. Accordingly, we suggest that Article 7.1 is dropped; if not, we suggest that it be replaced by a statutory requirement to provide details of the auditor's tenure, date of last tender and the description of the audit committee's discharge of their responsibilities under Article 5. This would provide useful information to investors, albeit much of which is already required on a 'comply or explain' basis.

We welcome the fact that Article 7.2 is drafted as a reserve power for the CMA to request information on the operation of the Order. To avoid duplication of resources, we believe that the FRC and ICAEW should collect information on operation of the Order alongside their existing audit monitoring. This will fit well with the fact that the FRC will be responsible for monitoring compliance with all of the requirements of the EU Regulation, including those relating to tendering and rotation of audit firms. For example, there is already a regulatory requirement for audit firms to provide the FRC with the identity of public interest audit clients and to provide further analysis of their audit client base in ICAEW Practice Assurance Annual Returns. Collecting data about the Order alongside these would provide useful information to the FRC in an efficient manner. We suggest that the Explanatory Notes make clear that the CMA only expect to exercise their power if sufficient information is not forthcoming from the FRC or in the unlikely event that an audit firm refuses to co-operate with the FRC.

If you require clarification of any of our comments above, please contact David Barnes (djbarnes@deloitte.co.uk or 020 7303 2888) or Richard Gillin (rgillin@deloitte.co.uk or 020 7007 0202).

Yours sincerely

A handwritten signature in dark ink, appearing to read "Deloitte LLP", is written over a light grey rectangular background.

Deloitte LLP