

19 January 2009

Our ref: ICAEW REP 08/09

Mr Paul Sharma
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The Financial Services Authority
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By email: paul.sharma@fsa.gov.uk

Dear Paul

DTR 6.3.5(2)

I am writing to draw your attention to two apparent problems with the Disclosure and Transparency Rules.

DTR 6.3.5(2) states:

- (a) An annual financial report that is required ... to be made public is not required to be communicated to the media in unedited full text except for the information described in paragraph (b).
- (b) If information is of a type that would be required to be disseminated in a half-yearly financial report then information of such a type that is contained in an annual financial report must be communicated to the media in unedited full text.

I understand that companies are having difficulty in knowing how to interpret this requirement and that the FSA is issuing conflicting guidance to companies that seek its advice.

Firstly, you will appreciate that it is difficult to strip out those components of an annual report of a type that would be required to be disseminated in a half-yearly report and then convert them into unedited full text.

One solution currently being adopted is to put out a Regulatory Information Service (RIS) announcement that gives a link to a PDF of the annual report on the company's website. However, some companies have been advised that this does not comply with the Rules, and we accept that this advice is probably correct. Another solution, adopted by other companies, is to embed a PDF of the annual report in an RIS announcement. But apparently this also does not comply with the Rules.

There is a need for definitive and practical guidance on how companies can comply with this requirement. In our view the second of the two methods referred to above satisfactorily achieves the Rule's objective of ensuring that full, unedited information is made available to the media.

A second problem with DTR 6.3.5(2) is that it appears to be the FSA's view that this Rule requires the information to be communicated to the media to include the auditors' report. However, there is also a view that the annual financial report being communicated under this Rule constitutes 'non-statutory accounts' within the meaning of s240, Companies Act 1985 (s435, Companies Act 2006). If this latter view is correct, then inclusion of the audit report in the communication would be contrary to the requirements of s240 (s435).

There is also a need, therefore, to clarify the interpretations of s240 (s435) and DTR 6.3.5(2) to establish whether there is in fact a conflict between the two and, if there is, to bring them into line by an appropriate amendment. Presumably this would be to the Rules, so as to clarify that they do not override the statutory requirement.

We look forward to your comments on these two questions. You will appreciate that this is a matter of some urgency in relation to information for December 2008 year-ends.

Yours sincerely

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