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Sent by email only to j.grewe@frc-pob.org.uk

Dear John

REGULATION OF THIRD COUNTRY AUDITORS – GIVING EFFECT IN THE UK TO THE REQUIREMENTS OF THE STATUTORY AUDIT DIRECTIVE

The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the above consultation document issued by the Professional Oversight Board ('POB') on the registration and regulation of third country auditors of issuers from outside the EU with securities admitted to trading on UK regulated markets. The Institute has taken a keen interest in this subject and previously responded to the European Commission consultation on the subject in early 2007 – this response is available at <http://www.icaew.com/index.cfm?route=147473>.

The Institute is in broad agreement with the actions proposed by the POB in this consultation document and in particular we support the use of common format application forms with other Member States, if this can be agreed, as this would avoid undue burdens being placed on firms. In our view this should be an urgent priority so that the September/October target date mentioned in the document for these forms to be available can be achieved. The current uncertainty regarding the application of these provisions of the Directive is unhelpful and issues should be resolved as rapidly as possible. In our view it is imperative that the ability for firms to register in accordance with the common application procedures is in place shortly after this target date and the register needs to be operational well in advance of the earliest accounts subject to these provisions (financial periods starting on or after 29 June 2008).

We accept the approach taken in paragraph 2.1 that it is the country of the audit firm that is relevant rather than the country of incorporation of the third country issuer. However, it is possible that other Member States will interpret paragraphs 4 and 5 of Article 2 of the Directive differently to mean that they should base their approach on the country of the issuer and this will potentially create considerable confusion. For example, a UK auditor that audits a third country issuer might still be required to register as a third country auditor in other Member States where the company has a listing. The POB should therefore argue in the relevant European discussions for the paragraph 2.1 approach to be adopted by all Member States.

It is also possible that there will be OTCAs (as defined by the POB) that are subject to double or multiple regulation as they audit companies with listings in both the EU and elsewhere, for example the US and Japan. In our view the POB's approach to the regulation of such auditors (and that of the other EU regulators) needs to be sufficiently flexible to take account of these circumstances and arrangements need to be established with the other regulators involved.

Our detailed answers to the POB's consultation questions are attached to this letter.

Please contact me should you wish to discuss any of the points raised in the response.

Yours sincerely



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ANSWERS TO THE POB'S CONSULTATION QUESTIONS

Timing of Introduction of Arrangements for Registration

Q1 How important is it that the Oversight Board has arrangements in place to accept and process applications (both for full registration and under transitional arrangements) from third country auditors as soon as the Commission Decision on transitional provisions is published (expected to be July)? Or should the Oversight Board allow more time to try to use common format application forms with other Member States from the outset? A realistic date for introducing this is September or October (paragraph 1.28).

We give here our answer to this issue, although we note that it is the role of other authorities, in particular the European Commission and BERR, to advise the POB/FRC regarding this matter. Clearly there is an overall transposition deadline for the Directive of 29 June 2008 and the relevant provisions in UK law came into force on 6 April 2008. To fully put the requirements into effect is a considerable piece of work and it would seem sufficient to us that work has started on this project by the overall transposition deadline and a target set for its completion, which is not that far into the future. A short delay in being able to fully process applications following the publication of the Commission Decision is therefore justifiable in our view if it allows procedures to be kept as simple as possible. We also note that Article 15 of the Directive allows for Member States to delay the public register (including that for third country auditors) becoming fully operational until 29 June 2009, although in our view common systems throughout the EU ought to be in place well before then (see below).

We do have sympathy for the position that the POB finds itself in and we would hope that European discussions are concluded shortly and a suitable agreement is reached which minimises the difficulties for the regulators and avoids unnecessary costs (along the lines proposed by POB), but which still allows the Commission to conclude that there is no need for any action in response to the short delay in Member States having arrangements fully in place for the registration and regulation of third country auditors. The delay in establishing suitable and workable arrangements is due to the delay in the publication of the Decision by the Commission and the time needed for the EGAOB deliberations on the issues and in our view this should be recognised by the Commission, particularly when we understand that other Member States are less advanced with their transposition plans than the UK is. We would support the use of common format application forms with other Member States, if this can be agreed, as this would seem helpful to the firms. This would reduce the burdens and should in our view be an urgent priority so that the September/October target date can be achieved – the current uncertainty regarding the application of these provisions of the Directive is unhelpful and issues should be resolved as rapidly as possible. In our view it is imperative that the ability for firms to register in accordance with the common application procedures is in place shortly after this target date and the register needs to be operational well in advance of the earliest accounts subject to these provisions (financial periods starting on or after 29 June 2008). We understand that in the meantime the POB will accept and consider any application made by a third country auditor although there might be a need to go back to the firm for additional information.

Registration

Q2 Do you agree with the overall approach to registration and in particular that there should be different requirements for 'transitional' third country auditors and for 'other' third country auditors? What comments do you have on the detailed registration requirements (paragraphs 2.7 to 2.10)?

Broadly yes. We agree that there need to be different requirements for ‘transitional’ third country auditors (TTCAs) and for ‘other’ third country auditors (OTCAs). It might be helpful for some guidance regarding the level of detail (or not!) for the description of the firm’s internal quality control systems (fourth sub-bullet of the first bullet in paragraph 2.8 for TTCAs). We also note that there might be restrictions on providing information about the outcome of the last external inspection (fourth bullet of paragraph 2.8), for example the PCAOB Part 2 inspection report.

It is unclear to us whether or not the Commission Decision requires the information for the public register as set out in Article 17 of the Directive. You have required this information in respect of OTCAs and we would have thought that this information should also be collected for TTCAs.

Q3 To what extent should Oversight Board seek to verify the accuracy and reliability of the information provided to apply for registration; to what extent should it rely on the audit firm to provide accurate information; and in particular should the firm be expected to provide references in support of its statement on good repute? (paragraph 2.11).

We would expect that you would at least verify as much of the data as possible with either the competent audit authority in the relevant country or the professional body of which the firm is a member.

De-Registration

Q4 What are your comments on the proposals on de-registration (paragraphs 2.12 to 2.13)?

Generally the proposals on de-registration seem sensible although in our view it would be appropriate to have a grading system for the examples of failures set out in paragraph 2.12. For example, if there is simply a relatively minor technical breach, possibly due to misunderstandings, this should not result in de-registration proceedings, whereas clear evidence of a major high - profile audit failure might result in early action if appropriate. In the latter case it will be necessary to obtain relevant information about the position as rapidly as possible and if this provides clear information about audit failure, it might be necessary to accelerate the normal timescales as set out in paragraph 2.13 for the sake of the protection of the markets. There need to be transparent and accountable processes in place for all these de-registration arrangements including proper appeals procedures. We would also expect the Oversight Board to give publicity to any de-registration.

External Quality Assurance Inspections

Q5 What are your comments on the approach to external inspections of third country auditors (paragraphs 2.14 to 2.15)?

We are in broad agreement with these proposals. It is difficult to comment in any more detail at this stage prior to the publication of the draft detailed plans for monitoring. We do think there is more urgency than is implied in these paragraphs as forward plans will need to be made and non-EU regulators will be keen to know the details.

Q6 Do you have any suggestions that we should take into account as we develop more detailed ideas for external monitoring ‘other’ third country auditors?

In the consultation paper you have already set out who may do the inspections (AIU, another EU regulator or an audit regulator from an ‘Article 46’ country). In the latter two cases the key issue

would be the extent to which the reviewer could report matters to you, and the extent that you could take regulatory action (including de-registration) based on that work. Otherwise we are unclear if you are asking for comment on the conduct of the inspection process or the risk factors that you mention in paragraph 2.15. In our view, the monitoring should be no less vigorous than is applied to UK firms. By definition, OTCAs are in countries where the EU already seems to have concluded that the arrangements for audit supervision are less than is required for those countries on the transitional list. This suggests to us that the monitoring process may need to be more vigorous as many of the 'environmental' factors of a strong accountancy profession may be missing. So, given the number of audits undertaken by OTCAs shown in Annex 3, the UK approach would be to simply review the particular file and leave the 'whole firm' procedures to the supervisory body, which may not be possible in these countries. The monitoring work may need to extend to whole firm matters such as the procedures for continuing professional development.

Oversight

Q7 What are your comments on the proposed approach to the continuing oversight of third country auditors (paragraphs 2.16 to 2.17)?

With respect of the TTCAs, we would expect that you would at least want to receive copies of the reports of any monitoring activity undertaken on the firm by the local regulator.

Investigations

Q8 What are your comments on the proposed approach to investigations and sanctions by the Oversight Board of third country auditors (paragraphs 2.18 to 2.19)?

While we can understand the practical problems of investigation etc. of a firm based in another country, the draft Decision does allow that investigation and penalty systems are applied to TTCAs, and therefore OTCAs, so we are surprised that you have dismissed this so readily. Our view is that it should be made clear to TCAs that they could be subject to investigations, even if in practice the process outlined in paragraph 2.13 is followed.

Fees

Q9 Do you have comments or suggestions on the proposed structure of fees? Do you have comments on the proposed level of fees? (paragraphs 2.20 to 2.27)

Fees will need to take into account the ability of firms to pay. However, we are surprised that there is not a greater level of difference between the fees for TTCAs and OTCAs. We would have expected a difference considerably greater than the 2:1 ratio proposed. We would also expect that all the POB's costs regarding TCAs are recovered from TCAs. There should not be any subsidy from other sources of POB's income. We note that a considerable amount of additional work will be needed on the costings once further information is available. This will include better information about the numbers of TTCAs and OTCAs as we understand that the information in Annex 3 of the consultation document is based on the issuer's country rather than the location of the auditor which might be different.

Costs and Benefits

Q10 Do you have comments on the assessment of costs and benefits in Chapter 4?

We do question whether the benefits of the measures outweigh the costs as we are not aware of investors calling for these measures in order to increase confidence in the markets. Whilst the UK is obliged to implement these measures, we believe that it is important to keep the costs to the minimum necessary, subject to our point above about subsidy, and there should be as much co-operation as possible with other regulatory authorities.

Other Points

Q11 Do you have any other comments or suggestions on how we should regulate third country auditors?

No further comments.