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By email : companiesact2006@bis.gsi.gov.uk

Dear Mr Rottenberg

DISCLOSURE OF LOANS TO DIRECTORS

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on the consultation paper *Disclosure of Loans to Directors in Company Accounts*.

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

Yours sincerely

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ICAEW REPRESENTATION

ICAEW REP 113/09

DISCLOSURE OF LOANS TO DIRECTORS

Memorandum of comment submitted in October 2009 by The Institute of Chartered Accountants in England and Wales, in response to the Department for Business, Innovation and Skills' Consultation, *Disclosure of Loans to Directors in Company Accounts* dated 5 August 2009

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales welcomes the opportunity to comment on the Department for Business, Innovation and Skills' Consultation *Disclosure of Loans to Directors in Company Accounts* (the Consultation).

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 165 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
4. Our members occupy a wide range of roles throughout the economy. This response was developed by the Financial Reporting Committee of the Institute, which includes preparers, analysts, standard-setters and academics as well as senior members of accounting firms.

MAJOR POINTS

Amending section 413(8)

5. The consultation paper makes it clear that there was no intention to change the law by requiring additional disclosures in the CA 2006 beyond those already required by the 1985 Act. Section 413(8) should therefore be amended to achieve the original intention for years ending 31 December 2009. This will not prejudice the outcome of the wider consultation nor act as a bar to further disclosures. It will avoid unnecessary and unhelpful disclosures and, as the consultation paper notes, provide a short-term solution to the current unclear state of the law.

Need to avoid onerous disclosures for all companies and not just banks

6. The consultation paper implies that for companies which are not able to use the amended section 413(8) exemption, it is necessary to disclose separately all individual transactions on an account. This will be very onerous for many private companies where it is common for directors to run 'current accounts' with the company. The 2006 Act substantially relaxed the prohibition on loans to directors so this is likely to become more common. The 1985 Act did not require disclosure of every transaction on a loan account. It required the balance at the start and end of the year, the maximum balance outstanding and certain other information about interest and provisions. Section 413 should be amended to clarify that disclosure of each individual transaction is not required as a matter of urgency for years ending 31 December 2009. We do not believe that disclosure of individual transactions is required by Article 43(1)(13) of the Fourth Directive and this was the accepted position under the 1985 Act.

Consider the purpose and effect of additional disclosures

7. It is important at a time at which banks and their directors are subject to intense media interest, to ensure that the effect of any new legislation is to achieve simpler, more meaningful disclosures of loans to directors that will enable shareholders and other stakeholders to make better decisions about the stewardship of companies. When deciding whether additional statutory requirements should be imposed, account should be taken of the requirements set out in accounting standards. Duplication should be avoided and any additional disclosures should be required only if there is a consensus that they are justified.

Whether more substantial reform is required

8. We believe that legislation should provide for the minimum required by EU law. The requirements of accounting standards (under IFRSs and UK GAAP) require disclosure of transactions with directors and their close families as well as companies controlled by them or significantly influenced by them. Additional disclosures going beyond those of accounting standards should only be included in legislation if they are clearly justified. Duplication should be avoided as this creates significant additional burdens for companies because of the need to be familiar with two similar but different sets of rules and for users who need to understand similar information meeting different requirements which adds unnecessarily to the complexity of financial reporting.
9. Accounting standards generally permit the aggregation of transactions with a class of related parties such as directors although additional details may be required in some circumstances. While this is generally adequate from the perspective of giving a true and fair view of the financial position and performance of a company, we acknowledge that there may be reasons for requiring the names of directors to be given as a matter of law. Although we support the approach of applying the directive minimum requirements and leaving the detail to accounting standards, we would not object to a legislative requirement to name directors in receipt of advances, credit or guarantees provided that this was done as a simple addition to s413 and did not involve the enactment of a completely new set of detailed rules.
10. In the same way, we are aware that accounting standards do not contain an explicit requirement to disclose the maximum balance outstanding on an account during the year. It is sometimes suggested that this might result in no disclosure where the balance is repaid before the end of the year. We would not object to such an additional legislative requirement to ensure that this could not occur.

RESPONSES TO SPECIFIC QUESTIONS

Question 1

Do you agree that the Government should amend section 413(8), as set out in Option 1, in time for the year ended 31 December 2009 annual accounts? The Government could then consider more fundamental reform of section 413 on a longer time scale.

11. We agree that the Government should amend section 413(8) as set out in Option 1 in time for the year ended 31 December 2009 annual accounts. The Government should also clarify, within this timescale, that disclosure of all transactions on a loan account is not required for companies generally (i.e. reinstating the position under the 1985 Act). It should then consider more fundamental reforms on a longer time scale although, as

noted above, this should be limited to specific additional requirements where they are justified.

Question 2

What are the costs and benefits of each of the options?

12. Option 1: amend S413 (8). This would incur little cost and will benefit banks by avoiding inconsistent, unnecessary unhelpful (and costly) disclosures. However, as noted above, this would not provide relief for companies other than banks from the apparently onerous requirements of S413.
13. Option 2: repeal S413 (8) and require the same level of details for advances etc. as for non-banking companies. This would result in substantial additional disclosures, would obscure in the broadest sense more important matters, and be of little benefit to shareholders and other stakeholders whose decision-making with regard to the stewardship of banks would not be substantially improved. However, the point is less relevant if it is clarified that companies generally are not required to disclose each transaction separately. Nevertheless, if the Government decides that directors in receipt of advances, credit or guarantees should be named, consideration will have to be given to whether this should apply to directors of banks. Banks may be distinguished by their legal status and that lending money is in the ordinary course of their business. For this reason they have not previously been required to provide names of directors in receipt of advances etc and we see no reason to change this position. While the cost of providing such disclosures may not be great, they serve little purpose if the amount of advances is given only in aggregate which is the accepted position and consistent with EU directives.
14. Option 3: require more disclosure by all companies, perhaps aligned with the authorisation requirements, and extending disclosure to connected persons, loans to directors of group companies, and for each director the opening, closing and maximum balances. For reasons explained above, we believe that this option would be costly in that companies would have to become familiar with two similar but different sets of rules. This would not lead to any useful improvement in disclosures from the users' perspective and indeed may reduce the usefulness of the disclosures since they become more complex. However, we could accept certain targeted additional requirements, as mentioned above, where this is clearly justified by the needs of the users of the financial statements. The cost of this may be relatively small.

Question 3

Which option do you prefer and why?

15. We prefer options 1 and 3 for the reasons set out above although, for the reasons explained above, we believe that any changes to the law under option 3 should be targeted additional requirements rather than a complete set of detailed requirements which duplicate those in accounting standards.

If the Government chose to look at further amendments to section 413 (Option 3)

Question 4

Should the directors in receipt of loans etc. be named in the disclosure?

16. See above.

Question 5

If they should be named, should this be only if the transaction exceeds a certain limit?

17. This would add complexity to the legislation. If directors are to be named, it would be simpler to require that in all cases. However, if an exemption were to be provided, consideration should be given to aligning this with the exemption from approval for minor and business transactions in s207.

Question 6

Should additional disclosure be required only for certain types of company, such as banks, large companies or traded companies?

18. No.

Question 7

Should a director's connected persons be caught by these provisions? Section 200 (Loans or quasi-loans to persons connected with directors: requirement of members' approval), and section 201 (Credit transactions: requirement of members' approval) apply to connected persons if the company is a public company or a company associated with a public company.

19. Although the definitions are not identical, transactions and balances with 'connected persons' would usually be caught by the requirements of accounting standards which extend to the close family of directors and to companies controlled by or significantly influenced by them. We therefore believe that additional legislative requirements in this area are unnecessary.

Question 8

Is it necessary to add further disclosures under section 413 particularly in the light of the additional requirements of the Companies Act, accounting standards and the Listing Rules concerning disclosure of related party transactions?

20. Legislation in this area should be kept to a minimum to provide maximum flexibility as times change. We generally do not support additional disclosures where they are already provided for by accounting standards and the Listing Rules. However, as noted above, we do not object to targeted additional disclosures that go beyond the requirements of accounting standards where this is justified and there is no duplication of similar requirements.

Question 9

Do you have alternative proposals?

21. No.

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