



FINANCIAL REPORTING REVIEW PANEL

PROPOSALS FOR CHANGES TO THE OPERATING PROCEDURES OF THE FINANCIAL REPORTING REVIEW PANEL

CONSULTATION PAPER

OCTOBER 2011

PROPOSALS FOR CHANGES TO THE OPERATING PROCEDURES OF THE FINANCIAL REPORTING REVIEW PANEL

Information sharing

The Panel's aim is to ensure that financial information issued by public and large private companies complies with the law and reporting requirements. The Panel has a statutory power¹ to require documents, information, and explanations from a company, its officers, employees and auditors.

Information received from companies under the Panel's statutory power cannot be shared with others, unless expressly permitted by the Companies Act, which permits the Panel to share confidential information with the Secretary of State, BIS, Treasury, the Bank of England and HMRC².

The Panel may also disclose such information to other bodies who fulfil particular functions. These include those designated by an order from the Secretary of State to exercise his functions relating to statutory auditors. It is under this exemption that the Panel can share information with the FRC's Professional Oversight Board (POB). The Panel may also share information with the FRC's Accountancy and Actuarial Disciplinary Board (AADB) when disclosure is made for the purposes of disciplinary proceedings relating to the performance by an accountant of his professional duties.

The FRC has a wide range of responsibilities in relation to corporate reporting which it exercises with a view to promoting high quality corporate governance and reporting to foster investment.

The Audit Inspection Unit (AIU) is the part of the FRC responsible for monitoring the audits of UK listed companies and other major public interest entities. It is established under the POB but is not included within the statutory exemption for information sharing with the Panel.

Although the AIU remit is different from that of the FRRP there is a significant overlap as both bodies have a focus on the corporate reporting of companies whose securities are traded on a regulated market and both incorporate AIM quoted companies in their work programme.

The initial selection of company reports for review for both units draws on a single risk model using publicly available information. It can be the case that, working independently, both units select the same company accounts and audit for review. While the FRRP's initial reviews and opening letters to companies can be shared with the AIU as they are the work of the FRRP, company responses to the Panel's requests for further documentation, information, and explanation cannot, under the FRRP's current Operating Procedures, be shared with the AIU.

¹ Section 459 Companies Act 2006

² Section 461 Companies Act 2006

The AIU may not be aware of correspondence between the Panel and the company whose audit is being reviewed and even if the audit firm are aware of such correspondence the AIU may not be able to obtain copies from the firm at a sufficiently early stage in the review process to inform their work. The FRC's effectiveness can be compromised in this respect.

Early sight of company responses and the conclusions and outcomes of the Panel's enquiries could inform the challenges raised by the AIU of the audit firms and reduce the potential for duplication of effort in cases where the Panel has already made its view known. Similarly, the Panel may benefit from the information that is available to the AIU.

Pending a change to the Companies Act the restrictions which apply where the Panel exercises its statutory power will continue, but where companies provide information voluntarily (as they usually do) the Panel is proposing a change. Currently the Panel treats all information obtained by it in the exercise of its functions as if it were subject to the restrictions on information received as a result of the exercise of its statutory powers, whether or not it is subject to those restrictions as a matter of law. The Panel now proposes to introduce an exception to that general provision, such that all voluntary information obtained by it in the exercise of its functions may be shared with the AIU (paragraph 49).

QUESTION 1

Do you have any objection to the Panel sharing information with the AIU ?

Press Notices

Under its operating procedures, the Panel may make an announcement where the directors of a company under review agree that their report or accounts are defective and requires corrective or clarifying action as specified by the Panel. The directors are invited to comment on a draft of the announcement.

Cases have arisen in which, prompted by Panel enquiries, directors have made changes to their next report or accounts but have not formally acknowledged that the previous accounts were defective. In those situations the Panel is currently unable to issue a press notice. It would be possible for the Panel to insist on restatement of the defective report or accounts, but it would not normally be proportionate to do so. The Panel therefore proposes to extend the circumstances in which it may make an announcement by reserving the right to issue a press notice in all cases where a company makes a significant change to its accounting or corporate reporting following an intervention from the Panel (paragraph 51).

The Panel reviews around 300 sets of reports and accounts a year. It writes to about half of these companies with a request for further information and explanation to help it better understand the company's reporting and accounting decisions. It is unusual for the Panel not to secure any improvement in a company's corporate

reporting and the Panel is not proposing that an announcement would be appropriate in the generality of cases.

It would, however, be helpful to be able to draw attention to significant cases, particularly those where companies make changes addressing the Panel's concerns but without acknowledging its intervention.

In other cases, where the existence of a case has become public, the Panel may consider publishing its own announcement (paragraph 54).

The Panel would not expect the proportion of reports and accounts reviewed that are the subject of press notices to increase substantially as a result of the proposed changes. As now, the directors of the company would be invited to comment on the Panel's draft press notice.

QUESTION 2

Do you have any objection to the Panel having the discretion to make an announcement in the circumstances specified?

THE FINANCIAL REPORTING REVIEW PANEL

OPERATING PROCEDURES

PART 1 - INTRODUCTION

Preamble

1. The Financial Reporting Review Panel is an unincorporated association forming part of the Financial Reporting Council, the United Kingdom's independent regulator for corporate reporting, auditing and corporate governance.
2. Under the Companies Act 2006 ("the Act") the Panel has been authorised and appointed by the Secretary of State for the Department of Business, Innovation and Skills (BIS) to exercise functions with a view to ensuring that accounts and financial and other reports, including annual reports, and directors' reports (Reports) of companies and other entities comply with the law and relevant reporting requirements.
3. The Panel's policy is to select Reports for review (a) by methods which take into account the Panel's assessment of the risk of non-compliance and the consequence of non-compliance, and (b) as a result of complaints.

Principles

4. As far as possible, the Panel seeks to operate by agreement with the entities whose Reports it reviews.
5. The Panel shall exercise the functions set out in the Act and in these Procedures with regard to the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006: transparency, accountability, proportionality, consistency, and targeting.
6. The Panel seeks to comply with the requirements of the Standards of Enforcement issued under the authority of the European Securities and Markets Authorities (ESMA)

Scope and Application

7. The Panel's scope includes (a) Reports required to be issued under the Act and (b) Reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules (which has the meaning given by Section 103(1) of the Financial Services and Markets Act 2000).

8. Cases involving Reports required to be issued under the Act are dealt with under Part 2 of these Operating Procedures. Cases involving Reports produced to comply with accounting requirements imposed by listing rules are dealt with under Part 3. Parts 4 and 5 apply to all cases.
9. The Panel may, where it deems necessary and appropriate, depart from any provision of these Operating Procedures. Nothing in these Operating Procedures gives rise, or is intended to give rise, to (a) any legal obligation for the Panel or any Panel or Group member or member of staff of the Panel, (b) any entitlement in favour of any other person, or (c) any legal relationship between the Panel or any Panel or Group member or member of staff of the Panel and any other person.

PART 2 – REPORTS ISSUED UNDER THE COMPANIES ACT

Annual Accounts

10. The Panel is authorised³ for the purposes of section 456 of the Act to make an application to court for a declaration that the annual accounts of a company do not comply, or a directors' report does not comply, with the requirements of the Act and for an order requiring the directors of the company to prepare revised accounts or a revised report.
11. The Panel's authority extends to all companies that prepare accounts under the Companies Act. In practice, and as agreed with BIS, the Panel normally exercises this authority only in connection with the accounts of public and large private companies as follows:
 - public limited companies;
 - companies within a group headed by a PLC;
 - any private company not qualifying as small or medium sized and not excluded from being treated as such under sections 382 to 384 and 465 to 467 of the Act;
 - any private company within a group which does not qualify as a small or medium-sized group.

Initial Consideration

12. Reports are reviewed by Panel staff for indications of potential breach of relevant accounting or reporting requirements. A preliminary analysis with a recommendation as to a course of action is provided for the Chairman and Deputy Chairman or Chairmen ("the Chairmen") who consider whether there is, or may be, a question whether a Report complies with relevant accounting or reporting requirements. Unless the Chairmen conclude that there is or may be such a question the Panel will not proceed with further review.
13. At any time during the initial consideration of a case, the Chairmen may consult with Panel staff, consultants or Panel members. Where the Chairmen consider it necessary, they may seek an opinion from lawyers or accountants outside the Panel.
14. Where the Chairmen are of the view that there is, or may be, a question whether a Report complies with relevant accounting or reporting requirements and additional information is required to decide whether an enquiry should be

³ Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2008 (S.I. 2008 No. 623)

opened into an alleged breach, the Chairman (or a member of staff of the Panel acting on their behalf and with their authority) may write to the Chairman of the entity under review asking for such information.

15. The Panel will address its first letter to the Chairman of the entity under review and will send a copy to the Finance Director where practicable. Subsequent correspondence may be directly with those with responsibility for the preparation of the accounts, such as the Finance Director. The first letter to an entity will enclose a note of the Panel's procedures and current membership and invite the entity to speak to identified members of staff of the Panel if it has any questions in connection with the function or powers of the Panel or any other aspect of its conduct or role. The Panel does not normally disclose how the matter at issue came to its attention, nor does it reveal the identity of any complainant.
16. A letter from the Chairman (or a member of staff of the Panel acting on their behalf and with their authority) asking for information does not constitute an enquiry by the Panel. Neither does it prevent the Panel from later opening an enquiry, nor from enquiring into matters other than those raised in that letter.
17. The Panel hopes to rely on the voluntary co-operation of entities when discharging its responsibilities. When it exercises its statutory powers to require information under Section 459 of the Act, it says so. The decision whether to exercise the Panel's statutory powers to require information rests with the Chairman or, in his absence, a Deputy Chairman.

Panel enquiry

18. Where, as a result of any of the steps referred to above, the Chairmen form the view that there may have been a breach of relevant reporting requirements, or that it is necessary to enquire further into whether there has been such a breach the Chairmen may open an enquiry. The Panel will write to the entity under review informing it that the Panel has opened an enquiry into the Report under review and has formed a group of Panel members to conduct the enquiry (a Group). The members of the Group are identified and the entity is given the opportunity of raising any perceived conflict of interest.
19. The letter to the entity identifies the relevant Report and indicates the respects in which there is, or may be, a question as to whether the Report complies with applicable accounting and reporting requirements. The letter invites the entity to comment on the matters raised as soon as practicable, and may specify a date by which a response is required.
20. The Group may, in the course of its enquiries, extend or vary the ambit of its enquiries. It will only do so where it identifies a new issue in respect of which

it considers there may have been a breach of a relevant reporting requirement or it is necessary to enquire further to determine whether there has been such a breach. If it decides to extend the nature of its enquiries by raising a new issue, the Group informs the entity as soon as possible after the decision and requests the entity's comments on that matter.

Entity responses

21. Documents, information and explanations provided by entities under review are analysed by Panel staff and reports produced for the Chairmen or Group, as appropriate.
22. The Chairmen or, if an enquiry has been opened, the Group may be satisfied by the entity response that there was no breach of applicable accounting and reporting requirements or that the breach is such that it does not warrant remedial action beyond any proposed by the entity. If, in response to a letter from the Panel, the entity under review provides additional information which does not allay the Panel's concern, further information may be requested at the Chairmen's' discretion.

Panel Groups

23. At the commencement of an enquiry the Chairman will appoint a Group to consider the matters at issue. No case can move towards a court hearing without the involvement of a Group and without the Group having consulted the Chairman (or, in his absence, a Deputy Chairman) on the necessity and appropriateness of making an application to court in the case at hand. A Group has all the powers of the Panel in respect of the matters to which its appointment relates, and all the acts and decisions of a Group in the conduct of an enquiry are acts and decisions of the Panel.
24. Groups consist of five or more Panel members and usually include the Chairman and one of the Deputy Chairmen. Where the Chairman is unable to chair a particular Group, one of the Deputy Chairmen shall do so and the other will normally be a member of the Group. In constituting a Group, the Chairmen shall be in the minority. Where none of the Chairmen is able to chair a Group, any other Group member may do so. Normally, every Group includes a lawyer in addition to representatives of the accounting profession. Where practical the Group will include members with relevant specialist or sector expertise. If, at any time, additional members are appointed to a Group, the entity under review is informed. When asked to join a Group each Panel member shall declare any interest he or she may have in, or relating to, the entity. A Panel member with such an interest shall not serve on the Group unless the interest is remote and is declared to and accepted by the entity.

25. The Chairman of the Group may communicate with an entity under review at any time. The Group may, where appropriate, consult with other members of the Panel or seek independent advice.
26. The quorum for a meeting of the Group is at least half of its members. Decisions by the Group require a two-thirds majority comprising at least four members.

Meetings

27. Meetings may be held with the entity under review at any stage. The Panel identifies the purpose of each meeting, notifies the entity of any points it wishes to cover and informs the entity of those attending on behalf of the Panel. Where practicable it also indicates possible next steps for which the entity may want to prepare.
28. Panel representation and attendance by Panel staff depends on the circumstances and the purpose for which a meeting is being held. Normally, where a Group has been established, Panel representation comprises all members of the Group. Where individual Group members are not present at a meeting they receive a copy of the note of the meeting. Where a Group has been appointed the Panel normally encourages the entity to ensure that its auditors attend meetings. It is, however, for the entity to decide whether other advisers should also be present. This may depend upon the purpose of the meeting.
29. At any stage during the consideration of a case, the Panel may invite the entity to a technical meeting. Technical meetings provide an opportunity for a smaller working group (which will usually be composed of members of the Group where one is appointed and will also include members of Panel staff) to progress a case and can take many forms. The entity is informed of the purpose of a technical meeting and of those attending for the Panel.
30. After each meeting between the entity under review and the Group a note is prepared of the discussions confirming the matters discussed and the main points agreed. The entity is invited to comment on the substance of the note.

Third parties

31. In some circumstances, and subject to considerations of confidentiality, the Panel may seek and receive representations from third parties where it appears that they may have useful and relevant information to contribute to the Panel's consideration of a case.

Voluntary revision

32. Where the Panel (the Group where an enquiry has been opened) and the entity under review agree that one or more Reports are to be rectified by way of revision, the directors decide whether this should be effected through a full revision and reissue of the relevant Report or by way of supplementary note. The Panel monitors the entity's revision of the defective information. If the entity fails to carry out the revision in the manner agreed as acceptable to the Panel, it may re-open the enquiry.
33. In some cases, the Panel is able to accept alternative corrective or clarificatory action by the directors – for example, a corrective statement published by the entity either separately or, if the timing is appropriate, in the next interim report, together with a corrective statement in the following annual accounts and adjustment of the relevant comparative figures and notes, as appropriate and as required by legislation. What form of corrective or clarificatory action is acceptable to the Panel depends on the circumstances of each individual case. The following, among other factors, will be taken into account:
- nature and effect of the defect;
 - the need to protect users of accounts;
 - the need to correct/prevent a false market operating; and
 - timing of the entity's reporting cycle.
34. Whether or not a Group has been formed the Panel may send a copy of the letter closing a case to the senior partner or chairman of the entity's auditors.

Application to court

35. In a case where agreement has not been reached the Group may, having heard the entity's explanation, conclude that the matter represents a breach of accounting and reporting requirements which the Panel should pursue. The Group will explain in writing that it is minded to make an application to the court and will provide the directors of the entity under review with an opportunity, at a meeting if they wish, either to persuade the Group that the relevant Report does comply with the law or, alternatively, to propose corrective or clarificatory action for the Group to consider.
36. The Group considers any response to the letter and any further submissions made by the entity under review in correspondence or at a meeting. If the Group is still not satisfied by the entity's response, the Group may, after taking legal advice and after the Chairman has discussed the matter with the

Chairman of the FRC, write a final letter to the Chairman of the entity. This letter will:

- set out the grounds on which the Group believes the accounts are in breach of accounting and reporting requirements, and
- indicate that it is the Panel's intention to apply to the court at any time after 14 days from the date of the letter.

37. The Group will consider any response to this final letter. If the Group is not satisfied by the response, or no response is received, the Group may, after having consulted the Chairman (or, in his absence, a Deputy Chairman), resolve that an application be made to the court.
38. On any application to court the Panel informs other authorities as appropriate, for example, FSA, BIS and the Stock Exchange, and may make a public announcement.

Advance clearance

39. The Panel does not operate a system of advance clearance and is unable to give advice to an entity or its auditors as to whether, in its opinion, a particular accounting treatment would or would not meet the requirements of the law or listing rules.

PART 3 – REPORTS ISSUED UNDER FSA RULES

Appointment for the monitoring of requirements of the FSA Rules

40. The Panel is appointed⁴ for the purposes of section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to keep under review Reports produced by certain issuers of transferable securities admitted to trading on a regulated market which are required to comply with any accounting requirements imposed by FSA rules and, if it thinks fit, to inform the FSA of any conclusions it reaches in relation to any such Reports.
41. The Panel will agree, and may from time to time revise, a Memorandum of Understanding with the FSA in relation to the exercise of these functions. Any such Memorandum of Understanding shall be published (http://www.frc.org.uk/images/uploaded/documents/300305%20-%20FSA-FRRP%20Memorandum%20of%20Understanding%20_Final_1.pdf).
42. If requested by the FSA, the Panel will also review the accounts of any other issuer of listed securities in relation to which the Panel would not otherwise be able to exercise its functions.

Procedures

43. The Panel reviews Reports produced by issuers of transferable securities which are required to comply with any accounting requirements imposed by FSA rules in accordance with Part 1 of these Operating Procedures, so far as applicable.
44. The Panel also follows the procedures set out in its Memorandum of Understanding with the FSA and in the case of any conflict with these Operating Procedures the Memorandum of Understanding shall prevail.
45. Members of the Panel staff may, with the consent of the Chairmen, report to the FSA at any time on the progress of any case, whether or not a Panel enquiry has begun.

⁴ Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2008 (S.I. 2008 No 623)

PART 4 – INFORMATION, CONFIDENTIALITY AND REPORTING

Powers to obtain information

46. These Operating Procedures govern the terms on which the Panel receives information and, except as provided by law, no stipulation which conflicts with them will have effect unless accepted by the Panel in writing.
47. The Panel has power under section 459 of the Act to require entities, officers, employees and auditors to produce any document or to provide any information or explanations that it may reasonably require for the purposes set out in section 459(2). The Panel is restricted from disclosing information so supplied except to the persons and for the purposes set out in Section 461. The exceptions provide for disclosure to specified bodies and others performing specified functions.

Confidentiality

48. Save as specifically set out in these Operating Procedures the Panel treats all information obtained by it in the exercise of its functions as if it were subject to the restrictions on information received as a result of the exercise of its statutory powers, whether or not it is subject to those restrictions as a matter of law.
49. The Panel may share such information with the Audit Inspection Unit, the part of the FRC's Professional Oversight Board responsible for the monitoring of major audits.
50. Panel members other than the Chairmen normally become aware of enquiries only when they are asked to join a Group or otherwise advise on an individual case. Papers relating to each Panel case are filed electronically or otherwise securely in the offices of the Secretariat and are retained in accordance with the Panel's retention policy. Care is taken to ensure that there is no unauthorised access to such papers within the general FRC office.

Public reporting of individual cases

51. The Panel reserves the right to make an announcement where, following its intervention, a company makes a significant change, whether corrective or clarificatory, to its financial or corporate reporting. The entity is invited to comment on the Panel's draft press notice.
52. The press notice summarises the accounting or legal issues in question, presents, as far as appropriate, the Panel's reasoning and its approach to the reporting issue, and outlines the remedial action taken by the entity.

53. The Panel generally aims to issue the press notice at the same time as the entity effects the corrective or clarificatory action agreed, or earlier, to be decided by the Chairmen.
54. In other cases, if the fact of the enquiry has become public, the Panel may consider releasing its own announcement.
55. The Panel makes an announcement on application to court and at the end of any court proceedings.
56. Where the FRC considers that the public interest requires it, the FRC may request the Chairman of the Panel to state whether a particular Report is under review. The Chairman, may, in his discretion, accede to such a request. He may also make such a statement on his own initiative, following discussion with the Chairman of the FRC, if he believes the public interest requires it. If, following a statement that a Report is under review, the Panel concludes that no regulatory action is necessary then, in discussion with the entity, it will offer to issue a press notice to that effect. Subject to that, the Panel's policy is neither to confirm nor deny that it is enquiring into, or has ever enquired into, a particular Report.

Other public reporting

57. The Panel will, from time to time, publicly report the results of its enforcement activity. The Panel may from time to time summarise the detail of cases which have led to corrective or clarificatory action and in respect of which it has issued a press notice. The Panel may also, without identifying the entities concerned, issue a press notice (sometimes called a 'generic' press notice) referring to one or more matters that have come to its attention that did not lead to corrective or clarificatory action or in respect of which no press notice was issued.

Other disclosure

58. Where information is forwarded by the Panel to other bodies, where permitted by the Act, the Panel may inform the entity, but reserves the right not to do so.
59. Save as referred to in these Operating Procedures or in the course of legal proceedings or as required by law the Panel does not publish or disclose additional information about a case beyond that which is included in any press notice. The Panel may disclose information to any firm or entity which is engaged to audit or report on the Panel's activities, but subject to the other provisions of these Operating Procedures no such information will be further disclosed without the consent of the entity concerned.

Communication with complainants

60. Where the Chairmen decide, after taking any appropriate advice, that a complaint is not to be pursued, the complainant is informed of that fact. Where the Panel intends pursuing an enquiry, any complainant is informed that they will be advised of the outcome of the case.
61. The Panel may seek further information from the complainant if it believes the complainant may have material pertinent to the case that needs to be taken into account.
62. Where a press notice is issued in respect of a complaint drawn to the Panel's attention by a complainant, the complainant is sent a copy of the press notice.
63. Where the Panel is satisfied in respect of a matter drawn to its attention by a complainant, the complainant is informed of the outcome and provided with such information as is consistent with the need for confidentiality. The Panel does not enter into further correspondence on the matter.

HM Revenue and Customs (HMRC)

64. The Panel will agree, and may from time to time revise, a Memorandum of Understanding with HMRC relating to the disclosure of information by HMRC to the Panel pursuant to Section 458 of the Act. The Panel will publish any such Memorandum of Understanding and will follow the procedures set out in it. (<http://www.frc.org.uk/images/uploaded/documents/250506%20-%20MoU%20with%20HMRC2.pdf>). In the case of any conflict with these Operating Procedures the Memorandum of Understanding shall prevail.

PART 5 – INTERNATIONAL CO-OPERATION

65. In its Accounting Regulation (EC) no 1606/2002, the European Commission requested ESMA to develop a harmonised approach to the enforcement of financial information in the EU. Pursuant to this mandate, the sub-committee on enforcement developed standards and application guidance with which all qualifying national enforcers are expected to comply and which provide for the co-ordination of enforcement activities.
66. The Panel may, from time to time, propose issues arising from individual cases for discussion at extended sessions of the sub-committee (EECS). The Panel only identifies the company concerned if it has concluded the case and issued a press notice or the case has otherwise become public.
66. The Panel is obliged to report certain cases of substance for inclusion in the database established by ESMA to assist in the harmonisation of the application of EU accounting requirements. The Panel is under a similar obligation to provide input to the Global IFRS Coordination Database under the terms of its Participation Arrangement with IOSCO. The Panel may consent to the publication of the information so included. The Panel will not normally consent to the naming of the entity concerned unless it has previously been publicly identified and will only give such consent after discussing the matter with the entity.
67. The Panel may disclose information pursuant to the protocol between the Financial Services Authority, the Financial Reporting Council and the US Securities and Exchange Commission to facilitate implementation of the ESMA-SEC work plan.



FINANCIAL REPORTING COUNCIL

5TH FLOOR

ALDWYCH HOUSE

71-91 ALDWYCH

LONDON WC2B 4HN

TEL: +44 (0)20 7492 2300

FAX: +44 (0)20 7492 2301

WEBSITE: www.frc.org.uk

© The Financial Reporting Council Limited 2011

The Financial Reporting Council Limited is a company limited by guarantee. Registered in England number 2486368.
Registered Office: 5th Floor, Aldwych House, 71-91 Aldwych, London WC2B 4HN.