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Dear Ms Horton

Consultation on the FRC's proposed Audit Enforcement Procedure ("the Consultation")

1 We welcome the opportunity to respond to the Consultation on the FRC's proposed new Audit Enforcement Procedure ("the Procedure"). We believe that aspects of the Procedure will provide greater opportunity for more effective resolution of matters in the context of the ultimate objective of seeking to safeguard the public interest in relation to Statutory Audit. In particular, we consider that the opportunity for earlier resolution (including through Constructive Engagement) and for the exercise of discretion regarding publicity will help to achieve this.

2 We have a number of comments on the details of the proposed provisions. The more significant of these, in relation to the Procedure as a whole and certain key paragraphs, are set out in this letter. Other comments of a more detailed nature are included in the attached Appendix 2. We have adopted the defined terms used in the Consultation. Beyond what is set out in this letter and its appendices, we do not have any comments in relation to the questions set out in the Consultation.

Timetable for introduction

3 There is much to be welcomed in the new Procedure but the timetable for its introduction is very short. Although this is not explicitly stated in the Consultation, it appears that the intention is that the Procedure will operate with effect from 17 June 2016, the date on which SATCAR 2016 will come into force. We are concerned that this leaves insufficient time for proper consideration to be given to issues raised in the Consultation. Moreover, the final version of SATCAR 2016 has yet to be published by BIS, so there will be no opportunity for interested parties to comment on the proposed Procedure in light of the final SATCAR 2016, and very little time for the FRC to make sure that the Procedure dovetails as effectively as possible with SATCAR 2016.

4 If there is an overriding legal necessity to bring the Procedure into effect from 17 June 2016, then we consider that it will be important for the FRC to review its operation and terms within 18 months of its introduction.

Scope of the Procedure and interaction with the Accountancy Scheme

5 We note that from the Consultation that the FRC and the RSBs are considering the future of the existing disciplinary scheme for accountants ("the Accountancy Scheme" or "the existing Scheme"). The need for and scope of the existing Scheme clearly needs to be reconsidered following the introduction of SATCAR 2016 and the Procedure. It is important for there to be clarity regarding the scope of the different disciplinary schemes for accountants operated by the FRC and the RSBs. The majority of the cases brought under the existing Scheme have related to financial reporting (in the sense of the preparation, approval and audit of statutory financial statements), as is to be expected given that the regulation of financial reporting is the FRC's core function. Accordingly, we suggest that the FRC and RSBs consider providing clarity by agreeing that responsibility for disciplinary matters in relation to members of RSBs will in future rest as follows:

- with the FRC in respect of financial reporting (as defined above), subject to the delegation of investigation to the RSBs in cases that meet agreed criteria; and
- with the RSBs in relation to other matters.

6 Statutory audit plays a very important role in providing confidence in the quality and reliability of the financial statements of companies in the UK. Indeed, this is an important part of the background to the introduction of the Procedure in relation to auditors. Nevertheless, the responsibility for preparing statutory financial statements and for the underlying accounting records from which they are derived rests, of course, with the directors of each company. Typically, certainly in larger companies, qualified accountants will be responsible for undertaking and/or supervising the work involved in complying with statutory requirements concerning keeping proper accounting records and preparing and/or approving the statutory financial statements (in the rest of this letter we refer to such activities as "statutory financial reporting"). It is just as important for those qualified accountants responsible for statutory financial reporting to be held to account as it is for the statutory auditors of the financial statements. The Procedure applies only to the statutory auditors (whether individuals or firms) and the Consultation is silent on how members of RSBs responsible for statutory financial reporting will be held to account. We would support the introduction of a specific, comparable scheme for this purpose to be operated by the FRC in parallel with the Procedure. We refer below to such a scheme as "the Financial Reporting Scheme". In order for matters to be addressed fairly and effectively, it would be important that both the Procedure (applicable to statutory auditors) and the Financial Reporting Scheme (applicable to RSB members responsible for statutory financial reporting)

include a mechanism whereby joint Enforcement Committee hearings and Tribunals of the two schemes can be held[1].

7 If the suggestions we set out in the two preceding paragraphs were adopted, the existing Scheme would no longer be required since the investigation of the conduct of members of RSBs would be addressed in the following ways:

- under the Procedure in relation to Statutory Audit matters;
- under the Financial Reporting Scheme in relation to statutory financial reporting matters; and
- by the RSBs' disciplinary schemes in relation to other matters.

8 Under Rule 4 of the Procedure, the Conduct Committee will determine whether to delegate an investigation to an appropriate RSB. As indicated above, we think that it is important that there are clear criteria for determining which matters the FRC will retain for investigation by Executive Counsel and which will be delegated to the appropriate RSB. As the introduction to the Consultation notes, the Procedure is being introduced to implement the Audit Regulation and its requirement for "a bespoke regime for the regulation of the Audit of PIEs". In this context, the natural division of responsibility would be for the FRC to retain all matters relating to the statutory audit of (and, we suggest, statutory financial reporting by) PIEs and to delegate all non-PIE matters to the RSBs. If this is not to be the case, then there should, at the least, be clear criteria for determining which matters beyond those required under the Audit Regulation the FRC will retain for investigation by Executive Counsel (for example, matters to do with the audit of AIM-listed companies with a market capitalisation during the period in question which exceeded a specified threshold).

9 We have included at Appendix 1 to this letter a chart showing how the relevant disciplinary procedure and investigatory body could be determined if the FRC and the RSBs were to adopt the suggestions we have made in the paragraphs above.

Thresholds and tests

10 The Procedure is based around breaches of Relevant Requirements. These requirements will be specified in SATCAR 2016 (the final version of which has yet to be published, as referred to above). The way in which these are defined in the draft SATCAR 2016, by referring generically to requirements of SATCAR 2016, the Audit Regulation and Parts 16 and 42 of the Companies Act, makes it very difficult to foresee how the conduct of Statutory Auditors and Statutory Audit Firms will be assessed under the Procedure. Experience has shown that such assessment is likely to involve consideration of whether the action taken by the auditor to meet the requirement(s) at

[1] A parallel can be drawn here with the changes made relatively recently to the FRC's existing Accountancy and Actuarial Schemes to allow joint Tribunals of these two schemes.

issue was reasonable in the circumstances, rather than a purely factual question of whether an auditor has followed or omitted to follow the requirement(s). These issues are generally matters of judgment and expert evidence. Reflecting this, the existing Scheme defines "Misconduct" as conduct which falls significantly short of the standards reasonably to be expected.

11 In this context, we consider that it will be essential for the FRC to develop guidance as to how it will approach assessing whether there has been a breach of a Relevant Requirement. In our view, this should retain the underlying premise of the current Misconduct test, i.e. that the conduct of the auditor should be assessed against what could reasonably have been expected of a competent auditor in the circumstances at the time. The guidance should also, we suggest, recognise that statutory audit only provides reasonable and not absolute assurance that financial statements are free from material misstatement. The fact that it is established with hindsight that financial statements did not, contrary to the audit report, show a true and fair view does not, of itself, demonstrate that the audit was inadequate or that there has been, under SATCAR 2016, a breach of Relevant Requirements.

12 Rule 4, relating to whether or not a matter should be investigated, incorporates a *"good reason"* test. We consider that there should be a similar threshold test at later stages of the process, i.e. the determination by Executive Counsel (under Rules 14 & 15) or by the Enforcement Committee (under Rule 21) of whether the respondent is liable for Enforcement Action. Guidance on what constitutes *"good reason"* in these contexts should be given. This may include factors listed at paragraph 5 of Appendix C (as long as there is, following the investigation, evidence to support the points). Other factors may also, however, be relevant. Drawing on the tests applicable in other comparable contexts, these should include consideration of the quality and reliability of the evidence available and whether or not there would be a reasonable prospect of an adverse finding were the matter to be considered by a Tribunal.

13 The Procedure currently contains no restriction on the investigation of Statutory Audits regardless of how long ago they took place. It is inherently more difficult to investigate matters that took place several years earlier. It will be harder to find witnesses and their memories of the events in question will inevitably be less clear. The public interest in pursuing older matters may also be less than in relation to more recent issues. It is widely recognised in law that defendants should not have to face claims and allegations which date back more than a specified period, widely six years in English law. In our view, the Procedure should include a comparable provision whereby the Conduct Committee is precluded from referring an allegation for investigation if the Statutory Audit report in question was dated more than six years previously. At the very least, this should be a significant factor in deciding whether the *"good reason"* test has been satisfied.

Individual auditors

14 It has become usual under the existing Scheme for the audit engagement partner to be placed under investigation as well as the audit firm. We acknowledge that there will be cases when it is appropriate for the individual partner to be subject to Enforcement Action. It seems likely, however, that the Procedure will give rise to more matters being referred for investigation than under the existing Scheme. If so, we think that there may be a significant risk that, if the individual partner is referred for investigation every time, this may be a deterrent to individuals choosing to become (or to remain) audit partners. In the medium term this would be likely to undermine audit quality. We consider that the better approach generally would be for only the audit firm to be placed under investigation in the first instance, with the conduct of the audit partner then considered as part of the investigation and a decision made later, in the light of evidence and the seriousness of the alleged breach of the Relevant Requirements, whether to place the partner under investigation as well. There may, of course, be exceptions to this where it will be appropriate to include the individual in the investigation from the outset. We also suggest that Enforcement Action should be taken against the individual partner only in relation to serious alleged breaches where his or her own conduct is implicated (and not where the breach is of a less serious nature and the individual's own conduct was not unreasonable in the circumstances). This would be consistent with the current position under the existing Scheme where Misconduct refers to acts or omissions which fall *"significantly short of the standards reasonably to be expected of a Member"*.

Time limits

15 As regards the time limit on Respondents of 28 days proposed in Rules 10, 15, 18 and 22, our experience is that, at least in more complex cases, this will be insufficient for a Respondent to properly consider the Report or Notice and to prepare any representations, including taking appropriate legal advice. It should be borne in mind that Executive Counsel's Initial Investigation Report may be provided some considerable time after the Respondent has been actively involved in the investigation and when the facts and issues are no longer freshly in mind. There may similarly be a delay before the issue of a Decision Notice or Notice of Referral. If these 28 day time limits are not extended in the Rules, and provision made for additional extensions to be agreed where appropriate, there is a risk that, in some cases, serious injustice may result, as well as a risk of matters going forward to Tribunal when this could have been avoided.

16 In our view, the minimum period in Rule 32 of 7 days for a Notice of the Hearing is unreasonably short. Counsel and witnesses cannot reasonably be expected to make themselves available in such a short period.

Evidence

17 Rules of evidence have been developed by the courts for important public policy and natural justice reasons. In our view, the Procedure should in general follow such rules. Accordingly, we do not see why it would be appropriate (as permitted by Rule 33) for evidence to be admissible before a Tribunal if it would not be admissible in a court. No justification has been provided for departing from the normal position and there must be a risk of challenge in the courts if the Tribunal were to allow evidence that would not be admissible in court proceedings.

Interim Orders

18 The imposition of an Interim Order is a very serious step since it involves imposing restrictions on a Statutory Auditor or a Statutory Audit Firm before adjudication of the allegation(s) against the Respondent. Accordingly, as with injunction proceedings in the courts, the bar for granting an Interim Order should be set at a sufficiently high level if the risk of serious injustice is to be avoided. Rule 57 requires only that *"there are reasonable grounds to consider that the Respondent may be liable to Enforcement Action"*. If a matter has been referred by the Conduct Committee for investigation, it is hard to see how this test will not be met (otherwise, why would the case have been referred?). Moreover, "Enforcement Action" encompasses a range of steps under Rules 15, 16, 21, 22, 23, 93 and 94 many of which fall short of a conclusive adverse finding against the Respondent. We do not therefore see this as a meaningful test in the context of consideration of a potential Interim Order. We suggest that there should be three tests in Rule 57:

- that it is more likely than not that the Respondent will be subject to a Final Decision Notice; and
- that there is a real risk of prejudice to third parties if the Interim Order is not granted; and
- (as currently drafted) that it is in the public interest or the interests of the Respondent.

19 For the same reason (that an Interim Order involves imposing restrictions before adjudication of the allegation(s)), we consider that there should be a presumption *against* publication of decisions in relation to Interim Orders. Otherwise, there is a serious risk of prejudice to the Statutory Auditor or Statutory Audit Firm in a situation where it remains to be established whether or not they should be subject to a Final Decision Notice. The FRC could retain a discretion to publish details of a decision in relation to an Interim Order where this is necessary to avoid a real risk of prejudice to third parties.

Appeal

20 The grounds for appeal in Rule 61 do not include that the decision was based on an error of fact, which is one of the grounds for appeal in High Court proceedings (subject to the case law on the subject). We cannot see any reason why this should not also be a ground for appeal under the Procedure.

Amendment of an allegation

21 Rule 77 allows the Enforcement Committee, Chair or Tribunal of their own volition to amend an allegation. This seems to us to confuse the role of "prosecutor" and "judge". It is surely for Executive Counsel to determine the nature and particulars of the allegation and to present the case in support of the allegation, and for the Enforcement Committee or Tribunal to determine whether the case has been made out. On this basis, we would suggest that the provisions in Rules 77 and 78 be deleted.

Settlement

22 We welcome the opportunity under the Procedure for cases to be resolved by agreement either at the Case Examiner stage or with Executive Counsel or at the Enforcement Committee stage. As currently drafted, however, the Rules appear to provide no opportunity for any discussion between the Respondent and Executive Counsel as regards the proposed Sanction. The Respondent is first made aware of the proposed Sanction in the Decision Notice. Unless the Respondent accepts the Decision Notice in its entirety, however, the matter ***must*** proceed to the Enforcement Committee. This is likely to reduce the number of cases that can be resolved at this stage. We believe that the FRC should consider whether, as with the Investigation Report, Executive Counsel's Decision Notice should first be provided to the Respondent in draft to allow the Respondent to make submissions regarding the proposed Sanction.

Sanctions

23 Rule 93(d) and the related guidance at paragraph 31 of Appendix G propose that in certain circumstances the Decision Maker may issue a declaration that a Statutory Audit report does not satisfy the Relevant Requirements. This is a new provision, derived from SATCAR 2016, and could have potentially far-reaching implications and consequences. Given the lack of guidance provided in Appendix G in relation to this potential Sanction, it is difficult to comment in detail. Questions which arise include:

- Is there any significance in the difference of wording between Rule 93(d) (which refers to a Statutory Audit Report which "does not satisfy the Relevant Requirements") and paragraph 31 of Appendix G (which refers to an audit report (or reports) which "does/do not satisfy the audit reporting requirements")? It is the latter wording which appears in the draft of SATCAR 2016.

- Will the Decision Maker indicate what form of Statutory Audit Report it considers should have been given?
- Is the Decision Maker really in a position to do this given that the investigation under the Procedure is likely only to have looked at certain aspects of the relevant audit(s) and, furthermore, the Decision Maker (whether the Executive Counsel or the relevant Committee or Tribunal) will not include anyone currently active as an approved statutory auditor.
- If the Decision Maker does indicate what form of Statutory Audit Report it considers should have been given and this later turns out not to have been appropriate, would this open up the FRC to criticism or challenge?
- If the Decision Maker states only that the Statutory Audit Report did not satisfy the Relevant Requirements without indicating what form of Statutory Audit Report it considers should have been given, will this not serve only to create uncertainty in the minds of investors and others?

24 The situation where a Sanction of the sort proposed under Rule 93(d) is most likely to be considered appropriate would appear to be where the investigation concludes that the financial statements in question did not give a true and fair view, contrary to the Statutory Audit Report. This may already have been drawn to the attention of users of the financial statements by a prior period adjustment in subsequent financial statements of the company concerned. In that case, a sanction of this sort will not serve any useful purpose. If, however, this has not happened, then a more appropriate Sanction would seem to be a declaration that the financial statements in question did not show a true and fair view. The FRC could in such a situation also consider using others of its powers to require the company concerned to make a prior period adjustment.

25 The initial bullet points in paragraphs 58 and 59 of Appendix G reproduce a provision of the existing Scheme in relation to self-reporting. There is, however, a fundamental difference between the existing Scheme and the Procedure. The former relates to "Misconduct" (as defined and relating to conduct which falls significantly below the standard to be expected), whereas the latter is concerned with breaches of Relevant Requirements, on the face of it a much lower threshold. In view of this, the number of situations in which this provision may be relevant is likely to increase significantly. In order for the situation to remain manageable for both Statutory Audit Firms and the FRC, we consider that there will be a need to develop an understanding of the FRC's expectations in this regard. Moreover, as there is no obligation on auditors to self-report breaches to the FRC, we question whether it is appropriate to include this issue as an aggravating factor in paragraph 58 rather than just as a mitigating factor in paragraph 59.

Reconsideration

26 Part 8 of the Procedure (Rules 66 to 71) allows reconsideration of decisions made under the Procedure. This is a wholly new mechanism which is not part of the existing Scheme. Nor is this mechanism referred to or explained in the Consultation. It would be helpful to understand why the FRC considers that such a mechanism is necessary and appropriate. In our view, the possibility, in certain circumstances, of reconsideration deprives the Respondent of the finality which is normally an important aspect of any judicial or quasi-judicial process.

27 This is particularly the case in respect of the ability of the FRC to reconsider a Notice of Cancellation issued under Rules 72 to 75[2]. The possibility of such Notices of Cancellation being reconsidered turns them almost into suspended sentences despite the fact that the Decision Maker has concluded that there is no reason to take action against the Respondent.

28 As a matter principle, we do not see why formal determinations by Executive Counsel and adjudicatory bodies set up under the Procedure should not be final (subject to the established Appeal process). Moreover, elements of the reconsideration mechanism are unsatisfactory for the following reasons:

- Rules 66 to 71 refer throughout to "the FRC". There is no clarity as to which organ of the FRC will take reconsideration decisions nor any due process around such decision making.
- Rule 67(a) contains no time limit for matters to be reconsidered. This is in sharp contrast to the 28 day time limit for a Respondent to file a notice of appeal under Rule 65.
- It is unclear whether Rule 67(b) is intended to refer to a new allegation in relation to the same audit(s) or in relation to a similar issue concerning one or more other audits (or both). If the allegation relates to matters that have already been investigated, then for the reasons set out above we consider that this would conflict with the Respondent's reasonable expectation of finality. If, in contrast, the allegation is wholly new, relating to another audit or an aspect of the audit that has not previously been investigated, then we can see no reason why it should not be considered in the same way as any other new allegation. It would not be necessary to reconsider a previous decision.
- We presume that it is intended that the condition in Rule 67(c) has to be fulfilled in all cases, whether they fall under Rule 67(a) or Rule 67(b), but this is not entirely clear.

29 If, notwithstanding the points which we make above, there is to be some mechanism to allow the FRC to challenge decisions made under the Procedure, in our view this

[2] We assume that the reference to Rule 76 in Rule 67 is a typographical error and that this is meant to refer to Rule 75. This is consistent with the reference back to Rule 67 in Rule 75.

should be part of the Appeal process in Part 7 of the Procedure, allowing Executive Counsel to appeal decisions of the Enforcement Committee and of the Tribunal in a manner that is comparable to the Respondent's right of appeal.

30 Other than in certain limited circumstances, the Procedure does not allow Respondents to recover their costs even if the Enforcement Committee or Tribunal finds in their favour. In our view, this presumption against the recovery of costs should be reversed in the event of reconsideration of a decision at the instigation of the FRC (as envisaged, inappropriately in our view, by Part 8) or of an appeal by Executive Counsel of the sort suggested in the previous paragraph above.

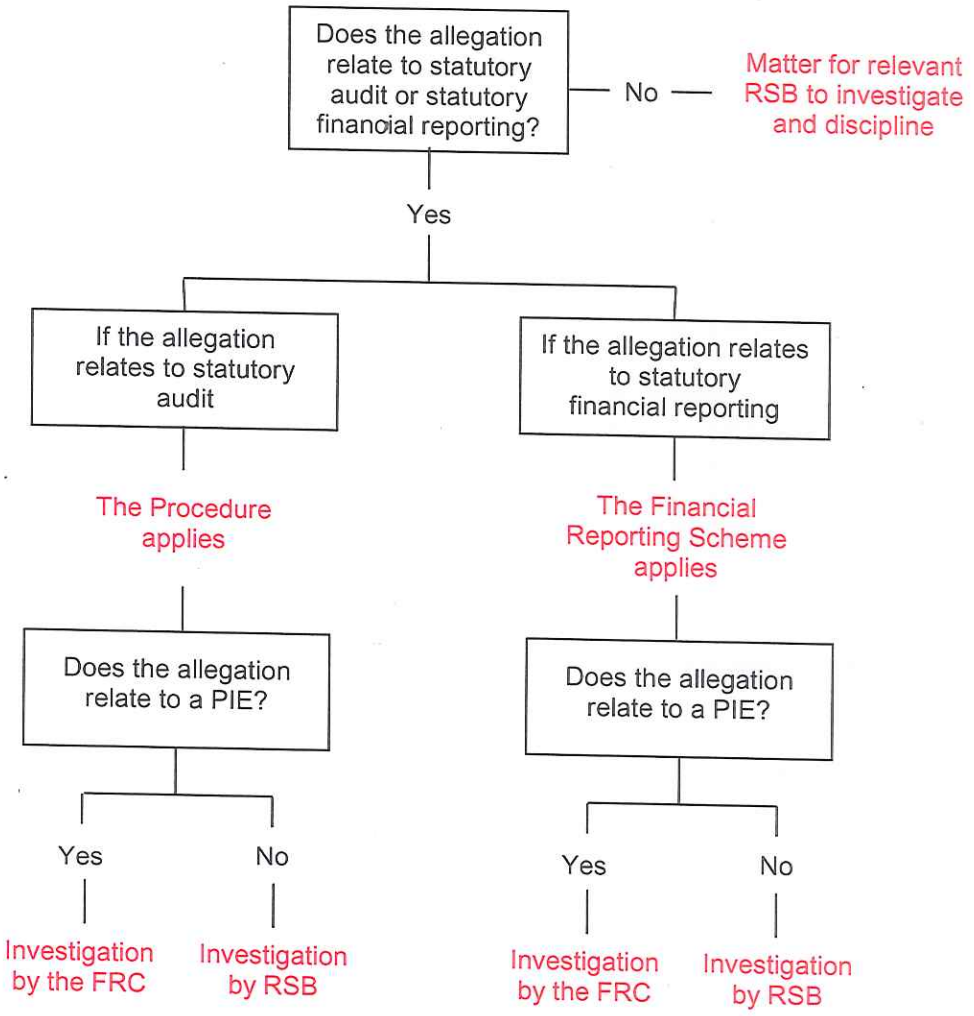
If you have any questions regarding our comments in this letter (or its appendices) or would like to discuss any of the points we have raised, please contact Alastair Hunter or me.

Yours sincerely

Jeremy Barton
General Counsel

APPENDIX 1

CHART TO DETERMINE RELEVANT DISCIPLINARY PROCEDURE AND INVESTIGATORY BODY



APPENDIX 2 DETAILED COMMENTS

General

1 The Procedure refers widely to Executive Counsel. We had understood that this role was in future to carry the title Director of Enforcement.

2 The Procedure and its Appendices are not consistent in using capitalised defined terms. Not all terms used in the text as defined terms are listed in Rule 1 (Interpretation/Glossary).

3 Some typographical errors, internal inconsistencies and errors in cross–references remain to be corrected.

4 In a number of places, the Procedure refers to "financial statements published by Statutory Auditors or Statutory Audit Firms" (or similar wording). Publication of financial statements is, however, the responsibility of the directors of companies rather than the auditor. Examples are paragraph 5(d) of Appendix C and paragraphs 14, 20, 30 and 77 of Appendix G. This wording should be revised wherever it is used.

Procedure (Appendix A)

Interpretation/Glossary

5 *Initial Investigation Report* We suggest replacing "outlines" with "sets out" on the basis that the Respondent should receive a full articulation of the allegation and alleged breach(es).

6 *Investigation Report* This should refer specifically to Executive Counsel rather than the FRC. We suggest clarifying the drafting as follows: "means the finalised version of the Initial Investigation Report prepared by Executive Counsel following …".

7 *Statutory Auditor* The way in which this term is used in the Procedure and accompanying guidance suggests that it may, at least in places, be intended to refer only to the Responsible Individual or Senior Statutory Auditor who signed the audit report(s) at issue, rather than to all individuals within the relevant Audit Firm who are approved to carry out Statutory Audits. This is not clear from the definition of Statutory Auditor. If the intended scope of this term differs in different contexts in the Procedure, this should be clarified.

Rules

8 *Rule 9* The reference to "any relevant accompanying papers" is unclear. We consider that the requirement should be for Executive Counsel to provide copies of any documents not already in the Respondent's possession on which Executive Counsel proposes to rely in an Enforcement Action.

9 *Rule 19(a)* This is presumably qualified by Rule 20(c).

10 *Rule 65* This would more logically follow directlly after Rule 60 and should include a reference to Interim Orders, as follows: "… of the issuing of the relevant Interim Order or Final Decision Notice". The cross-reference in Rule 62 will need to be changed if Rule 65 is moved. It is also not clear whether the Respondent has to file only a notice of Appeal within 28 days or its full submissions in relation to the Appeal. We assume that it is the former and that submissions will follow if permission to Appeal is granted. This should be clarified.

11 *Rule 75* This could usefully be clarified by using the same construction as, for example, in Rule 15 so that the introduction finishes as follows: "… they shall issue a Notice of Cancellation which shall: (a) …".

12 *Rule 80* The phrase "any disputed facts of the allegation" would be clearer as "any disputed facts in relation to the allegation".

13 *Rule 81* This would benefit from the addition of the word "together" after "determine".

14 *Rule 93* We note that the proposed Sanctions do not include reprimands or severe reprimands, which are among the sanctions available under the existing Accountancy Scheme. We are not clear why these have been dropped in the Procedure.

Appendix B: Case Examiner Guidance

15 No comments.

Appendix C: Conduct Committee Guidance

16 *Paragraphs 5(c), (d) and (e)* We question whether it is appropriate to use the word "caused" in these paragraphs. It would be extremely unusual for an audit failing to cause, at least in a direct and exclusive way, financial detriment of the sort suggested. Moreover, as a matter of law auditors do not owe legal duties to third parties and we therefore question what is meant by the use of the words "those reliant upon the statutory audit process".

Appendix D: Case Management Committee Terms of Reference

17 Unlike the other Appendices, Appendix D appears to relate to the existing Accountancy and Actuarial Schemes and the Auditor General Disciplinary Rules as well as to the Procedure. Is there a reason for treating Appendix D but not the other Appendices in this way?

Appendix E: Tribunal and Appeal Tribunal Appointments

18 No comments.

Appendix F: Hearing Guidance

19 No comments.

Appendix G: Sanctions Policy

20 *Paragraphs 16 and 62 to 67* Is there a reason for the exclusion of the Tribunal and Appeal Tribunal from the provisions of these paragraphs?

21 *Paragraph 20 (1st bullet point) and paragraph 38 (1st bullet point)* These points would benefit from the addition of the words "in question" at the end (and consistency in the use of "Requirements" rather than "Requirement").

22 *Paragraph 20, 5th bullet point* Unlike the other points in this paragraph, the 5th bullet point does not appear in the comparable paragraph of the guidance in relation to existing Scheme. We consider that the more relevant point at which to take account of financial strength is when determining the appropriate amount of a financial penalty. This is reflected in paragraphs 38 (3rd bullet point) to 40 and is consistent with the basis on which the existing Scheme addresses the issue. We do not understand why financial strength should be regarded as a relevant factor when assessing the nature and seriousness of the breach and determining which sanction(s) might be appropriate. We note, however, that draft SATCAR 2016 includes financial strength as a factor to be taken into account in relation to the type as well as the level of sanctions. If the reference to turnover is to be included in paragraph 20, the wording should be consistent with paragraph 39 (i.e. referring to turnover of the Statutory Audit Firm or the business unit(s) involved in the breach).

23 *Paragraph 38, 3rd bullet point* A similar point arises here in that the example given does not appear in the comparable paragraph of the guidance in relation to the existing Scheme. The point is already covered in paragraph 39. If it is also to be included in paragraph 38, this should be in the same terms. As the draft SATCAR 2016 refers to "turnover" rather than "revenue", it may be appropriate to amend paragraph 39 so that it refers to "turnover of the Statutory Audit Firm or the business

unit(s) involved in the breach". We consider that it is important to retain the reference to the business unit(s) involved on the grounds of proportionality where statutory audit is only one of many activities carried on by the frim in question.

24 *Paragraph 55, last bullet point* This could usefully be updated to refer at the end to "Relevant Requirements" in place of "the relevant rules, standards, or procedures".

25 *Paragraph 56* We are concerned about the threshold for recklessness in this paragraph – that an auditor "knew or ought to have known a proposed course of action or inaction might involve a breach of the [R]elevant [R]equirements" As discussed in paragraphs 10 and 11 of our attached letter, determination of what does or may constitute a breach of a Relevant Requirement is inherently difficult and will generally be a matter of judgement and expert evidence. In this context, we consider that the threshold for recklessness ought to be set higher, for example that the auditor "knew or ought to have known a proposed course of action or inaction was likely to involve a breach of the [R]elevant [R]equirements".

26 *Paragraph 58, 3rd bullet point* The word "Misconduct", carried over from the existing Accountancy Scheme, needs to be updated.

27 *Paragraph 58, 6th bullet point* This point has been carried over from the existing Scheme which is concerned with disciplinary action against Members and Member Firms in a wide variety of situations. In contrast, the Procedure is only concerned with Statutory Audit. In that context, the point is not relevant as a Statutory Auditor would not be expected to owe a fiduciary duty or be responsible for public funds.

28 *Paragraph 59, 7th bullet point* We presume that this is intended to refer to any incremental gain as a result of the breach, rather than the normal fee chargeable for the audit.

Appendix H: Publications Policy

29 *Paragraph 5(a)* The word "Final" should be inserted before "Decision Notice".

30 *Paragraph 12* If the FRC exercises its discretion to publicise the commencement of an investigation (under paragraph 12(a)) then it should always also publicise the outcome of such investigation where no Sanction is imposed (under paragraph 12(b)). Not to do so would be unfair to the Respondent.