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The Hundred Group
of Finance Directors

Anna Colban
Secretary to the AADB
Financial Reporting Council
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10 April 2008

Dear Ms Colban

Response to the Accountancy Scheme Review consultation paper

The Hundred Group of Finance Directors represents the views of the finance directors of the UK's largest companies drawn largely, but not entirely, from the constituents of the FTSE100 Index. Our members are the finance directors of companies whose market capitalisation collectively represents over 80% of companies listed on the London Stock Exchange. Views expressed in this letter are those of The Hundred Group of Finance Directors but are not necessarily those of our individual members or their respective employers. We meet periodically to discuss issues affecting major corporations, and selectively respond to governmental and other consultation exercises where we believe that our role in companies and collective experience give us a particular insight into often complex matters.

We read with interest your consultation document. We welcome a number of the measures proposed but we have some significant concerns as set out below:

Award of costs

We strongly recommend that the AADB reconsiders the proposal to change the basis upon which costs are awarded in favour of a respondent. We understand the Board's need to ensure it is properly funded and not to be constrained from bringing proceedings because of the possibility that costs may be awarded against it. However, we feel very strongly that the award of costs should not be on the basis of misfeasance but should be awarded on the basis of "unreasonable" behaviour. This would bring the FRC in line with other regulators like the Financial Services Authority where costs are paid where the FSA has acted "unreasonably".

Misconduct/Relevant conduct

We agree that a review of the definition of "misconduct" is required to ensure that any definitions are consistent with a court's interpretation of "misconduct" but we do not agree with the proposed definition. In particular, it is unclear to us whether the numbered provisions included in paragraph 6.6 are intended to read as stand alone alternative grounds (and therefore one should read "or" between the provisions) or whether they are intended to be cumulative (and therefore one should read "and"). If the former is the proposed definition we consider this definition to be too wide and we would advocate restricting the definition.

We would recommend restricting the definition to 6.6(v) that misconduct is “falling short of the standards of professional conduct, competence or integrity reasonably to be expected of a member or member firm”. We consider this would be the most appropriate definition of misconduct and indeed have the following comments on the other criteria proposed:

- “is likely to damage public confidence in the accountancy profession” – we do not believe this provision should be included as from time to time there can be an expectations gap between the role of a member or member firm and the public’s expectation of their role. If a member or member firm has met the standards of professional conduct, competence or integrity reasonably expected of him or it but at the same time for some reason damaged public confidence in the accountancy profession, then this is indicative that either the standards are wrong or there is a public expectation gap. In either case, we consider that it would be inappropriate to subject the member or member firm to disciplinary action.
- “is likely to bring discredit on himself or itself, the accountancy profession or (in the case of an individual) his employer” – we do not consider this an appropriate stand alone criterion for the AADB as it is linked to personal misconduct rather than serious professional shortcomings which is what the AADB was set up to investigate.
- “fails to comply with any relevant law, charter, bye-law, regulation or guidance” - again we consider that this definition is too wide. In particular, guidance is by its nature non-mandatory and therefore failure to comply with non-mandatory guidance should not be included in the definition of relevant conduct. We also consider that materiality should be taken into account when considering compliance with laws, charters, bye-laws and regulation. If the act or omission fails to comply with any relevant law etc but this is immaterial, then we do not consider this should be treated as relevant conduct. We believe that a failure to comply with laws etc is a sub-set of determining what is a reasonable standard of professional conduct, competence or integrity. It is therefore covered by provision 6.6(v) and so a separate provision is not required.
- “fails to comply with applicable accounting, auditing, ethical or other standards” – again we believe this is taken into account when determining a failure to meet a reasonable standard of professional conduct, competence or integrity. If this provision were to be included, again materiality should be applied and the reference to “other standards” should be deleted as again too wide a definition.

Interaction with criminal proceedings

In addition, we note that the new criminal offence of knowingly or recklessly issuing an incorrect audit report may impact on the ability of members or member firms to cooperate as openly with an investigation as it may have done in the past. We would therefore recommend that the rules of the AADB should indicate how they would intend to proceed with an investigation which may be running at the same time or ahead of any criminal investigation. In particular consideration should be given as to how members can cooperate fully where there is a risk of self incrimination, without itself giving rise to a further disciplinary offence.

We hope you find this letter of interest. We would be happy to discuss it further at your convenience.

Yours sincerely



Peter Williams
Chairman of Investor Relations and Markets Committee
The Hundred Group