



Grant Thornton

Our Ref NJJ/SCA/OB/0308
Your Ref POB PUBLICATION SCHEME

Financial Reporting Council
5th Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

For the attention of Ms Christina Trickett

17 March 2008

Dear Sirs

Consultation on Professional Oversight Board Draft Publication Scheme

We welcome the opportunity to comment on the Professional Oversight Board's (POB) proposals. We were extremely concerned when a late amendment to the Companies Act 2006 meant that the POB's activities were brought within the scope of the Freedom of Information Act (FOIA). We believe that a number of unintended consequences could arise to the detriment of the confidence in the capital markets largely as a result of confidential information being used out of context.

Regard to the public interest

We observe that while the draft publication scheme deals with the requirements of FOIA Part II Exempt Information, it does not address section 19.3. Section 19.3 requires that:

"In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest -

- (a) in allowing public access to information held by the authority, and
- (b) in the publication of reasons for decisions made by the authority".

We note that there is no reference in the draft publication scheme to public interest. In our view, the POB's publication scheme should describe the meaning that the POB ascribes to "the public interest", and the principles it will apply when allowing or denying access to information and in describing the reasons for decisions made by the POB. Those principles should make clear the important distinction (which we fear would otherwise be unclear) between "public interest" and "information that some members of the public might be interested to know".

The POB is aware of the potential damage to confidence of the capital markets that could arise if certain information within its control were to be released or obtained by parties who did not necessarily care so deeply about that confidence. In addition to the minimum requirements in law, we urge the POB to publish the principles it will use in deciding whether access to information should be granted.

Information relating to POB non-statutory functions

We know from our dealings with other public authorities that provision of access to

National Office

Grant Thornton UK LLP
Grant Thornton House
Melton Street
London NW1 2EP

T +44 (0)20 7383 5100
F +44 (0)20 7383 4715
DX 2100 EUSTON
www.grant-thornton.co.uk

Chartered Accountants

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information is a costly and onerous process, and the more information made available the more costly it is for the authority. We are concerned that, consistent with the intention of the FOIA, the POB does not create more problems for itself than it needs to.

We believe that the POB need only make information available as it pertains to the POB's statutory responsibilities. Information relating to non-statutory activities such as practice reviews and assignment reviews should fall outside the scope of the FOIA.

The purpose of the FOIA is to make information held by public authorities accessible through a FOIA section 1 Request. Information held by private entities to which a public authority has the right to access was never intended to be subject to such access.

Whilst by any interpretation the POB need only make information available that it controls, in our view it would nonetheless benefit the POB (and companies) if they clarified in the publication scheme that audit files, audit methodologies and audit firm documentation are not "held" by the POB and so will not be accessible through a FOIA section 1 request.

Notify the subject of the information request

We would also expect that where there is an information request that the POB will notify the company and auditor which are the subject of that request. For example, the POB will wish to notify the relevant parties that a request has been received, specify a right of representation by the company to the POB as part of the release decision process, and set out principles for the POB's regard to the interests of the company (and the capital markets).

We would welcome the opportunity to comment on those additional elements of the publication scheme, but note the short time available for formal consultation between the response deadline of 17 March 2008, and the effective date of 6 April 2008 when the scheme comes into force.

If you have any questions on this response, please contact Owen Brookman (phone: 0207 728 2973; email owen.brookman@gtuk.com) or Sue Almond (phone: 0870 381 7120; email Sue.Almond@gtuk.com).

Yours faithfully

Grant Thornton UK LLP

Owen Brookman
Solicitor
For Grant Thornton UK LLP
Direct T: 0207 728 2973
E: owen.brookman@gtuk.com

Appendix 1 - questions for consultation

Question 1: Have we categorised any information as being excluded from publication which could be released?

Grant Thornton response: No.

Question 2: Have we omitted any information/ documents which should be classed as exempt from the publication scheme?

Grant Thornton response: Yes. An overriding principle should be that information relating to non-statutory functions will not be accessible. Another overriding principle should be that information deemed by the POB to be harmful to confidence of the capital markets will not be accessible.

The scheme should clarify that the list of exemptions is illustrative but not exhaustive.

We suggest the following amendments (shown in **bold text**) to information which "will not normally be made available to the public":

- [Auditors] "Private reports, **all working papers supporting those private reports, draft reports, both in respect to the audit firm as a whole and any summary reports on individual audits, and correspondence relating to** annual monitoring visits [of RQBs and RSBs]"
- [Accountants] "Private reports, **all working papers supporting those private reports, draft reports, and correspondence relating to** annual monitoring visits [to professional bodies]"
- [AIU] "AIU working documents, **draft reports, summary reports and correspondence** relating to [individual inspections]"
- [All classes] "**Any information deemed by the POB to be harmful to confidence of the capital markets and not in the public interest.**"