

**The Audit Inspection Unit**  
**Operating Procedures for Maintaining Confidentiality (April 2008)**

**Background**

1. The Audit Regulations and Guidance 2008<sup>1</sup> give the Audit Inspection Unit (AIU) powers to obtain access to audit firms' documentation, systems and personnel and specify related confidentiality obligations:
  - Regulation 6.06 gives the AIU the right to require an audit firm, "to the extent necessary for the review of a firm's audit work or how it is complying or intends to comply with [the Audit Regulations] ... to provide any information, held in whatever form (including electronic), about the firm or its clients and to allow access to the firm's systems and personnel".
  - Regulation 6.08 provides that all information so obtained will be confidential but may be disclosed to "any person or body undertaking regulatory, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law".
  - Section 1224A of the Companies Act 2006 allows information to be disclosed by the AIU to the persons specified or for the purposes specified in Schedule 11A to the Act or for the purpose of facilitating the carrying out of any of its functions.
2. The AIU's operating procedures for maintaining the confidentiality of information obtained from firms should be read in conjunction with the Audit Regulations and Guidance 2008<sup>1</sup> and Section 1224A of, and Schedule 11A to, the Companies Act 2006. The AIU will not enter into confidentiality agreements with individual firms.

**Confidentiality of information provided**

3. The AIU will treat all information which is not in the public domain ("non-public information") and which it obtains from firms for monitoring purposes as having been provided in confidence pursuant to Regulation 6.06 and therefore being subject to the confidentiality provisions under Regulation 6.08. The AIU will only disclose such information within the FRC, to an external UK or overseas body or to other persons (including the public at large), whether on its own initiative or otherwise, where it is satisfied that the disclosure is permitted under Regulation 6.08 and Section 1224A of the Companies Act 2006 and is not in contravention of any other statutory provision including the requirements of the Data Protection Act 1998.

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<sup>1</sup> Issued by the ICAEW, the ICAS and the ICAI and available on the ICAEW website.

### **Disclosures in connection with third party litigation**

4. The AIU will not disclose non-public information obtained by it from firms for the purposes of third party litigation other than pursuant to a court order.

### **Prior notice of disclosures**

5. The AIU will, at its discretion, give such advance notice of disclosure to an audit firm (or any other person or body) as it considers necessary and appropriate in a particular case. It will not, however, undertake to give advance notice in all cases. Accordingly, firms should recognise that disclosures of information may be made by the AIU under Audit Regulation 6.08 and Section 1224A of the Companies Act 2006 without prior notice.
6. If, exceptionally, the AIU considers it appropriate it will afford the firm (or other person or body) concerned a reasonable opportunity to make representations as to whether an intended disclosure should be made and as to the scope of any disclosure. In most cases where advance notice is given, however, the purpose will not be to provide the firm with an opportunity to make such representations and the notice period given will reflect this.

### **Confidentiality requirements for staff**

7. All staff are employees of the Financial Reporting Council (FRC) and required to observe FRC-wide Guiding Principles on independence, confidentiality and conflicts of interest. (References to "AIU staff" in these operating procedures are to those FRC staff members who are allocated to the work of the AIU.) The FRC-wide Guiding Principles provide, inter alia, that staff members must:
  - keep confidential all non-public information they acquire through their role at the FRC, unless the disclosure of that information has been properly authorised; and
  - not derive, or seek to derive, any personal benefit, or enable any other person to do so, as a result of such non-public information obtained by them.
8. In addition to the FRC-wide Guiding Principles, there are detailed requirements in relation to independence, confidentiality and conflicts of interest which apply to all AIU staff. These provide, inter alia, that non-public information obtained in the course of the AIU's work may only be disclosed outside the AIU or the Professional Oversight Board, including to other FRC staff or Board members of other FRC bodies, with the prior approval of the AIU Director or the Oversight Board Director. Such approval will only be given where the proposed disclosure falls within the terms of Regulation 6.08.

9. All AIU staff are required to sign both initial declarations (on joining) and annual declarations confirming that they are aware of these detailed requirements and will comply with them at all times. Annual confirmation of compliance with the statutory provisions against insider dealing is also required. On leaving employment, AIU staff acknowledge in writing that the confidentiality undertakings previously given by them continue to apply.

### **Working practices**

10. The AIU inspection team will be based at the premises of the firm subject to inspection, unless some other arrangement is considered more appropriate in an individual case. It will not remove original documentation from the firm's premises or other location where the inspection takes place, other than any such documentation provided directly to the inspection team for the AIU's working papers. It may, however, take copies of certain documentation or print copies of documentation held in electronic form. As a matter of courtesy, the firm will be advised if copies of its documentation taken by the AIU team are to be removed from its premises or other location where the inspection takes place.
11. While an inspection is in progress, the AIU inspection team will, in most cases, keep its working papers and laptops at the firm's premises. The firm is responsible for providing secure office accommodation and secure storage facilities. The AIU inspection team is responsible for ensuring that working papers and laptops are securely stored in accordance with the facilities provided. It will have regard to any specific requests in this connection which may be made by the firm.

### **Security of AIU working papers and AIU reports**

12. When an inspection has been completed, the related AIU working papers will in most cases be removed from the firm's premises and filed securely in the area of the FRC's premises allocated to the AIU. AIU working papers including draft reports in both hard copy and electronic form will only be accessible on a routine basis to AIU staff and the Oversight Board Director.
13. Access to AIU working papers and reports will be provided at the FRC's premises to any person appointed by the Oversight Board to undertake a quality assurance review of the AIU's work in order to assist it in discharging its oversight responsibilities (to the extent necessary for this purpose). Any such person will be required to sign an appropriate confidentiality agreement.
14. Copies of all AIU private reports on inspections will be treated as strictly confidential at all times, clearly marked as such and subject to similar security arrangements as the inspection working papers. All members of the Oversight

Board will have access to copies of AIU private reports at the FRC's premises for the purpose of discharging their responsibilities as Board members.

15. Members of any sub-committees established by the Oversight Board to assume particular responsibility for overseeing the AIU's reporting will be given access to copies of AIU private reports, draft reports and supporting working papers to the extent necessary for this purpose. The AIU Director may provide such Board members with access to AIU private reports, draft reports and/or supporting working papers outside the FRC's premises where considered appropriate to enable them to discharge their roles effectively. (Other Board members who are given access to copies of AIU private reports will not remove a copy of any such report from the FRC's premises.)

#### **Document retention policy**

16. The AIU will retain documentation relating to individual inspections for at least six years following the completion of the inspection. Thereafter, it will destroy such documentation on a systematic basis.

#### **Public reporting and the Freedom of Information Act 2000**

17. With effect from 6 April 2008 the Oversight Board is designated as a public authority under the Freedom of Information Act 2000 in relation to the statutory functions delegated to it by the Secretary of State for Business, Enterprise and Regulatory Reform ("statutory functions"). The audit inspection activities undertaken by the AIU do not form part of the Oversight Board's statutory functions and are therefore outside the scope of the Freedom of Information Act 2000. In accordance with the Oversight Board's commitment to observing the principle of transparency across all its activities, certain information relating to the AIU's activities will be published on a voluntary basis.
18. In line with policy decisions made by the Oversight Board in 2007, the AIU will issue public reports on individual audit firms inspected with effect from Autumn 2008. Schedule 11A to the Companies Act 2006 makes provision for such public reports to be issued provided that they do not identify any audit client of a firm.