

# **THE FINANCIAL REPORTING REVIEW PANEL**

## **OPERATING PROCEDURES**

### **PART 1 - INTRODUCTION**

#### **Preamble**

1. The Financial Reporting Review Panel (the Panel) is an unincorporated association forming part of the Financial Reporting Council (FRC), the United Kingdom's independent regulator for corporate reporting, auditing and corporate governance.
2. Under the Companies Act 1985 (the Companies Act) the Panel has been authorised and appointed by the Secretary of State for Trade and Industry to exercise functions with a view to ensuring that accounts and financial and other reports, including annual reports, operating and financial reviews 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 is committed to the Principles of Good Regulation of the Better Regulation Task Force: proportionality, targeting, consistency, transparency (subject to the requirements of confidentiality) and accountability.
6. The Panel seeks to comply with the requirements of the Standards of Enforcement issued under the authority of the Committee of European Securities Regulators.

#### **Scope and Application**

7. The Panel's scope includes (a) Reports required to be issued under the Companies 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 Companies 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 authorised under s245C of the Companies Act and Article 253C of the Companies (Northern Ireland) Order 1986 (the NI Order) to make an application to court under Section 245B of the Companies Act and Article 253B of the NI Order for a declaration or declarator that the annual accounts of a company do not comply with the requirements of the Companies Act or such Order and for an order requiring the directors of the company to prepare revised accounts.
11. The Panel's authority extends to all companies that prepare accounts under the Companies Act. In practice the Panel normally exercises this authority only in connection with the accounts of public and large private companies, although the Panel may exercise its authority in connection with the accounts of other companies where it considers appropriate. The following come within the Panel's remit:
  - public limited companies;
  - companies within a group headed by a PLC;
  - any private company not qualifying as small or medium sized under Section 247 of the Companies Act;
  - any private company within a group which does not qualify as a small or medium-sized group

### **Operating and Financial Review and Directors' Report**

12. The Panel is authorised to apply to court for a declaration that the operating and financial review (OFR) issued in respect of a financial year beginning on or after 1<sup>st</sup> April 2006 of a quoted company does not comply with the requirements of the Companies Act and for an order requiring the directors to prepare a revised OFR. The Panel is similarly authorised in respect of the directors' reports of large and medium-sized companies.
13. The Panel will only seek an order requiring directors to revise an OFR where:
  - the OFR omits a requirement of the Companies Act,
  - the OFR purports to comply with an OFR reporting standard but does not do so,
  - the OFR is factually wrong in a material respect, or
  - the OFR contains an opinion which no reasonable board could have formed if it had followed a proper process of collecting and evaluating evidence.

## **Initial Consideration**

14. 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 (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 an investigation.
15. 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.
16. 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 opened into an alleged breach, the Chairmen (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.
17. The Panel will address its first letter to the chairman of the entity under review. 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.
18. A letter from the Chairmen (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, or from enquiring into matters other than those raised in that letter.
19. 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 245F of the Companies 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, the Deputy Chairman.

## **Panel enquiry**

20. 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 will 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. The Chairman of the Group may communicate with an entity under review at any time.

21. 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.
22. 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**

23. Documents, information and explanations provided by entities under review are analysed by Panel staff and reports produced for the Chairmen or Group, as appropriate.
24. 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**

25. At the commencement of an enquiry the Chairmen 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, the 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.
26. Groups consist of five or more Panel members and usually include the Chairmen. Where the Chairman is unable to chair a particular Group the Deputy Chairman will usually do so. Where neither 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.

27. The Group may, where appropriate, consult with other members of the Panel or seek independent advice.
28. 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**

29. 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.
30. 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.
31. At any stage during an enquiry, the Group may invite the entity to a technical meeting which may be attended by one or more Group members and Panel staff. Technical meetings provide an opportunity for a smaller working group (which will usually be composed of members of the Group, but may 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.
32. 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.

### **Voluntary revision**

33. 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.

34. 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.

### **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 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, the deputy Chairman) on the necessity and appropriateness of making an application to court in the case at hand, resolve that an application be made to the court.
38. On application to court the Panel informs the Registrar of Companies and at the same time, makes a public announcement.

### **Third parties**

39. 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.

### **Advance clearance**

40. The Panel does not operate a system of advance clearance and is unable to give advice to a 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 LISTING RULES**

### **Appointment for the monitoring of requirements of the Listing Rules**

41. The Panel is appointed under The Supervision of Accounts and Reports (Prescribed Body) Order 2005 to keep under review Reports produced by certain issuers of listed securities that are required to comply with accounting requirements of listing rules and, if it thinks fit, to inform the Financial Services Authority (FSA) of any conclusions it reaches in relation to any such Reports.
42. 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.
43. The Panel exercises these functions in relation to:
  - any issuer of listed securities which is a body corporate incorporated or otherwise formed in the UK;
  - any issuer of listed securities which is a body corporate incorporated or otherwise formed outside the UK with a primary listing of its equity securities in the UK ; and
  - if requested by the FSA, any other issuer of listed securities in relation to which the Panel would not otherwise be able to exercise its functions.

### **Procedures**

44. The Panel reviews Reports produced by issuers of listed securities to comply with any accounting requirements imposed by listing rules in accordance with Part 1 of these Operating Procedures, so far as applicable.
45. 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.
46. 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.

## **PART 4 – INFORMATION, CONFIDENTIALITY AND REPORTING**

### **Powers to obtain information**

47. The Panel has power under Section 245F of the Companies 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 245F(2) of the Companies Act. The Panel is restricted from disclosing information so supplied except to the persons and for the purposes set out in under Section 245G of the Companies Act.

### **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. Panel members, other than the Chairman and Deputy Chairman, normally become aware of enquiries only when they are asked to join a Group or otherwise advise on an individual case.

49. 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 by other persons within the general FRC office.

### **Public reporting of individual cases**

50. The Panel may make an announcement at the conclusion of an enquiry where the directors of the entity under review have agreed that the Report under review was defective and requires corrective or clarificatory action, as specified by the Panel. The entity is invited to comment on the Panel's draft press notice.

51. 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 agreed with the entity.

52. The press notice may be issued at the same time as the entity effects the corrective or clarificatory action agreed or earlier, as to be decided by the Chairmen.

53. The Panel does not usually make an announcement at the conclusion of an enquiry when the Report under review is not found to be defective. If the entity makes an announcement however, the Panel may consider releasing its own announcement.

54. The Panel makes an announcement on application to court and at the end of any court proceedings.

55. Where FRC considers that the public interest requires it, 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, without a request from 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**

56. The Panel may, 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**

57. Where information is forwarded by the Panel to other bodies, where permitted by the Companies Act, the Panel may inform the entity, but reserves the right not to do so.

58. 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.

### **Communication with complainants**

59. 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.

60. 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.

61. 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.

62. 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.

### **Inland Revenue**

63. The Panel will agree, and may from time to time revise, a Memorandum of Understanding with the Inland Revenue relating to the disclosure of information by the Inland Revenue to the Panel pursuant to Section 245D of the Companies Act or Article 253C of the Companies (Northern Ireland) Order 1986. The Panel will publish any such Memorandum of Understanding and will follow the procedures set out in it. In the case of any conflict with these Operating Procedures the Memorandum of Understanding shall prevail.

#### **PART 4 – INTERNATIONAL CO-OPERATION**

64. In its Accounting Regulation (EC) no 1606/2002, the European Commission requested the European Committee of Securities Regulators (CESR) to develop a harmonised approach to the enforcement of financial information in the EU. Pursuant to this mandate, the sub-committee on enforcement (CESRfin SCE) develops Standards and application guidance with which all qualifying national enforcers are expected to comply and which provide for the co-ordination of enforcement activities.
65. 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 Report at issue 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 private database established by CESRfin (SCE) to assist in the harmonisation of the application of EU accounting requirements.