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The Conduct Committee: Operating procedures for reviewing corporate reporting

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THE CONDUCT COMMITTEE

OPERATING PROCEDURES FOR REVIEWING CORPORATE REPORTING

PART 1 - INTRODUCTION

Preamble

1. The Conduct Committee is part of the Financial Reporting Council, the United Kingdom's independent regulator for corporate reporting, auditing and corporate governance.
2. Under the Companies Act 2006 ("the Act") the Conduct Committee has been authorised and appointed by the Secretary of State for the Department of Business, Innovation and Skills (BIS) to exercise functions with a view to ensuring that accounts and financial and other reports, including annual reports, and directors' reports (Reports) of companies and other entities comply with the law and relevant reporting requirements.
3. The Conduct Committee's policy is to select Reports for review (a) by methods which take into account the Conduct Committee'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 Conduct Committee seeks to operate by agreement with the entities whose Reports have been reviewed.
5. The Conduct Committee shall exercise the functions set out in the Act and in these Procedures with regard to the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006: transparency, accountability, proportionality, consistency, and targeting. The Conduct Committee considers that these Procedures comply with the principles for regulatory delivery as set out in the Regulators' Code, issued by BIS in April 2014.
6. The Conduct Committee seeks to comply with the requirements of relevant Guidelines and Recommendations issued under the authority of the European Securities and Markets Authority (ESMA).

Scope and Application

7. The Conduct Committee's scope includes (a) Reports required to be issued under the Act and (b) Reports that are produced by issuers of listed securities that are required to comply with any accounting requirements imposed by the Financial Conduct Authority's 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 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 Conduct Committee 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 Conduct Committee, the Corporate Reporting Review Committee, (CRR Committee) any Review Group or any member of the Conduct Committee, the CRR Committee or any Review Group or any member of FRC staff, (b) any entitlement in favour of any other person, or (c) any legal relationship between the Conduct Committee, the CRR Committee or any member of those Committees, or any Review Group or any member of FRC staff and any other person.

Committees and Review Groups

10. The Conduct Committee is a committee of the FRC Board. The CRR Committee is a committee of the Conduct Committee. The terms of reference of both Committees are available on the FRC website: <https://www.frc.org.uk/About-the-FRC/FRC-structure/Conduct-Committee/Terms-of-Reference.aspx> and <https://www.frc.org.uk/About-the-FRC/FRC-structure/Corporate-Reporting-Review-Committee/Terms-of-Reference.aspx>
11. The Conduct Committee maintains a Financial Reporting Review Panel (FRRP) comprising individuals who have the appropriate qualifications and experience to sit on a Review Group including the members of the CRR Committee who are also members of the Conduct Committee.
12. Review Groups will be appointed from the FRRP by the CRR Committee.

Transitional provisions

13. These Operating Procedures will have immediate effect. Any steps taken under the previous Operating Procedures, issued either by the Conduct Committee or its predecessor the Financial Reporting Review Panel, shall be deemed to have been taken under these Operating Procedures.

PART 2 – REPORTS ISSUED UNDER THE ACT

Annual Accounts

14. The Conduct Committee is authorised¹ for the purposes of section 456 of the Act to make an application to court for a declaration that the annual accounts of a company do not comply, or a strategic report or a directors' report does not comply, with the requirements of the Act and for an order requiring the directors of the company to prepare revised accounts or a revised report.
15. The Conduct Committee's authority extends to all companies that prepare reports and accounts under the Act. In practice, and as agreed with BIS, the Conduct Committee normally exercises this authority only in connection with the accounts of public and large private companies as follows:
 - public limited companies (PLC);
 - companies within a group headed by a PLC;
 - any private company not qualifying as small or medium sized under sections 382, 383, 465 or 466 of the Act;
 - any private company which is excluded from being treated as small or medium sized by sections 384 and 467 of the Act;
 - any private company within a group which does not qualify as a small or medium-sized group under sections 383 or 466 of the Act;
 - any private company within an ineligible group under sections 384 or 467 of the Act.

Initial Consideration

16. Reports are reviewed by FRC 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 to the CRR Committee. That analysis and recommendation is considered by the CRR Committee to determine whether there is, or may be, a question whether a Report complies with relevant accounting or reporting requirements. Unless the CRR Committee concludes that there is or may be such a question, there will be no further review.
17. Where the CRR Committee is 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 Chairman of the CRR (the Chairman), or a member of FRC staff acting on his behalf, may write to the Chairman of the entity under review asking for such information. The letter may also include comments on other aspects of the entity's Report to encourage improvements to the quality of its future reporting.
18. Any such letter will be addressed to the Chairman of the entity under review and will be copied to the Finance Director and Audit Committee Chairman where practicable. Subsequent correspondence may be directly with those

¹ Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2012 (S.I. 2012 No. 1439)

with responsibility for the preparation of the accounts, such as the Finance Director. The first letter to an entity will enclose a copy of these Operating Procedures and invite the entity to speak to identified members of FRC staff if it has any questions in connection with the functions or powers of the Conduct Committee or these Operating Procedures or any other aspect of its conduct or role. Neither the Conduct Committee nor any other committee or individual acting in accordance with these Operating Procedures will normally disclose how the matter at issue came to its attention.

19. The Chairman, or a member of FRC staff, may write to the entity under review at any time during the initial consideration following the initial letter sent in accordance with paragraphs 17 and 18.
20. A letter from the Chairman, or a member of FRC staff, asking for information does not constitute a Review Group enquiry nor does it prevent the Chairman or member of FRC staff from enquiring into matters other than those raised in that letter. Such a letter does not prevent the CRR Committee from later opening an enquiry.
21. Documents, information and explanations provided by entities under review are analysed by FRC staff and where appropriate, reports produced for the CRR Committee.
22. Where, following any of the steps above, the CRR Committee or FRC staff:
 - a) are 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 further action by the entity; or
 - b) conclude that proposals made by the directors of the entity to rectify one or more Reports by way of revision or to take alternative corrective or clarificatory action, should be accepted;there will be no further review.
23. Where the matter has not been concluded in accordance with paragraph 22 and the CRR Committee or FRC staff conclude 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 CRR Committee shall determine whether to open an enquiry.
24. At any time during the initial consideration of a case, the CRR Committee and/or FRC staff, may consult with consultants or members of the FRRP. Where the CRR Committee and/or FRC staff consider it necessary, they may seek an opinion from independent lawyers or accountants.

Opening an enquiry and appointment of a Review Group

25. On determining that an enquiry be opened, the CRR Committee shall appoint a Review Group to consider the matters at issue.
26. Review Groups consist of five or more FRRP members and usually include the Chairman of the CRR Committee and one of the other members of the CRR Committee. Where the Chairman is unable to chair a particular Review Group, one of the members of the CRR Committee shall do so and the other will

normally be a member of the Review Group. The Chairman and other members of the CRR Committee shall constitute a minority of the Review Group. Where none of the members of the CRR Committee are able to chair a Review Group, any other Review Group member may do so. Normally, every Review Group includes a lawyer in addition to representatives of the accounting profession. Where practical the Review Group will include members with relevant specialist or sector expertise. If, at any time, additional members are appointed to a Review Group, the entity under review is informed. When asked to join a Review Group, each FRRP member shall declare any interest he or she may have in, or relating to, the entity. A member with such an interest shall not serve on the Review Group unless the interest is remote and is declared to, and accepted by, the entity.

27. FRC staff, at the direction of the CRR Committee, will write to the entity informing it that the CRR Committee has opened an enquiry into the Report under review and has formed a Review Group to conduct the enquiry. The members of the Review Group are identified and the entity is given the opportunity of raising any perceived conflict of interest.
28. 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.

Review Group enquiry

29. The Review 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 Review Group notifies the CRR Committee where necessary, and informs the entity as soon as possible after the decision and requests the entity's comments on that matter.
30. The quorum for a meeting of the Review Group is at least half of its members. Decisions by the Review Group require a two-thirds majority comprising at least four members.
31. The Chairman of the Review Group (or a member of FRC staff acting on his behalf) may communicate with an entity under review at any time. The Review Group may, where appropriate, consult with other members of the FRRP or seek independent advice.
32. Documents, information and explanations provided by entities under review are analysed by FRC staff and reports produced for the Review Group.
33. The Review 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 so, the Review Group agrees the course of action proposed by the entity and reports to the CRR Committee, following which there will be no further review.

34. In a case where agreement has not been reached, the Review Group may, having heard the entity's explanation, conclude that the matter represents a breach of accounting and reporting requirements which the Conduct Committee should pursue. The Review Group will explain to the entity in writing that it is minded to report to the Conduct Committee recommending that the Conduct Committee makes 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 Review Group that the relevant Report does comply with the law or, alternatively, to propose corrective or clarificatory action for the Review Group to consider.
35. The Review 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 Review Group is still not satisfied by the entity's response or proposals for corrective or clarificatory action, it writes a final letter to the Chairman of the entity. This letter will:
- set out the grounds on which the Review Group believes the accounts are in breach of accounting and reporting requirements; and
 - indicate that it is the Review Group's intention to refer the matter to the Conduct Committee to decide whether or not to apply to the court at any time after 14 days from the date of the letter.
36. The Review Group will consider any response to this final letter. If the Review Group is not satisfied by the response, or no response is received, the Review Group will refer the matter to the Conduct Committee.

Application to court

37. The Conduct Committee considers a report of the Review Group which sets out the issues, the entity's response and the recommendations of the Review Group.
38. If the Conduct Committee considers the report by the Review Group and concludes that:
- a) the matter represents a breach of accounting and reporting requirements;
 - b) any corrective or clarificatory action proposed by the entity under review is not appropriate; and
 - c) taking into account all the circumstances of the case, an application to court is appropriate,
- it shall resolve to apply to court.
39. A decision to apply to court by the Conduct Committee requires a majority of the votes of all the members of the Conduct Committee for the time being (whether present at the meeting or not).
40. On any application to court the Conduct Committee informs other authorities as appropriate, for example, the Financial Conduct Authority (FCA), the Prudential Regulatory Authority (PRA), BIS and the Stock Exchange, and will ordinarily make a public announcement.

Meetings

41. Meetings may be held with the entity under review at the initial consideration or Review Group enquiry stage. The FRC staff identify the purpose of each meeting, notify the entity of any points that they, or the CRR Committee or Review Group wish to cover and inform the entity of those attending the meeting. Where practicable the FRC staff also indicate possible next steps for which the entity may want to prepare.
42. Review Group and FRC staff attendance depends on the circumstances and the purpose for which a meeting is being held. Normally, where a Review Group has been established, all members of the Group attend. Where individual Review Group members are not present at a meeting they receive a copy of the note of the meeting. Where a Review Group has been appointed the entity is encouraged 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.
43. At any stage during the consideration of a case, FRC staff, the CRR Committee or the Review Group may invite the entity to a technical meeting. Technical meetings provide an opportunity for a smaller working group (which will usually be composed of members of the Review Group where one is appointed and will also include members of FRC 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 the meeting.
44. After each meeting between the entity under review and FRC staff, (depending on its nature), the CRR Committee or a Review 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

45. Where the CRR Committee or the Review 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 entity's revision of the defective information is monitored by the FRC staff on behalf of the CRR Committee. If the entity fails to carry out the revision in the manner agreed as acceptable to the CRR Committee, it may open or re-open the enquiry as applicable.
46. In some cases, the CRR Committee or the Review Group may 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 or annual report, together with an 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 CRR Committee or the Review Group 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.
47. Whether or not a Review Group has been appointed, a copy of the letter closing a case may be sent to the senior partner or chairman of the entity's auditors

Third parties

48. In some circumstances, and subject to considerations of confidentiality, representations may be sought from third parties where it appears that they may have useful and relevant information to contribute to the CRR Committee's or FRC staff's initial consideration, the Review Group enquiry and/or the Conduct Committee's consideration of a case.

Advance clearance

49. The Conduct Committee does not operate a system of advance clearance and is unable to give advice to an 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 FCA RULES

Appointment for the monitoring of requirements of the FCA Rules

50. The Conduct Committee is appointed² for the purposes of section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to keep under review Reports produced by certain issuers of transferable securities admitted to trading on a regulated market which are required to comply with any accounting requirements imposed by FCA rules and, if it thinks fit, to inform the FCA of any conclusions it reaches in relation to any such Reports.
51. The FRC has overarching Memoranda of Understanding with the FCA and the PRA which set out the arrangements for co-operation and co-ordination. The Conduct Committee may agree, and from time to time revise, arrangements with the FCA and/or PRA in relation to the exercise of these functions. Any such arrangement shall be published
52. If requested by the FCA, the Conduct Committee will also review the accounts of any other issuer of listed securities in relation to which the Conduct Committee would not otherwise be able to exercise its functions.

Procedures

53. The Reports produced by issuers of transferable securities which are required to comply with any accounting requirements imposed by FCA rules will be reviewed in accordance with Part 2 of these Operating Procedures, so far as applicable.
54. The procedures set out in any arrangement of the Conduct Committee with the FCA and/or PRA are also followed. In the case of any conflict with these Operating Procedures the arrangement shall prevail.
55. FRC staff may, with the consent of the CRR Committee, report to the FCA at any time on the progress of any case, whether or not a Conduct Committee enquiry has begun.

² Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2012 (S.I. 2012 No 1439)

PART 4 – INFORMATION, CONFIDENTIALITY AND REPORTING

Powers to obtain information

56. These Operating Procedures govern the terms on which the Conduct Committee, the CRR Committee and FRC staff receive information and, except as provided by law, no stipulation which conflicts with them will have effect unless accepted by the Conduct Committee in writing.
57. The Conduct Committee has power under section 459 of the 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 459(2). The Conduct Committee is restricted from disclosing information so supplied except to the persons and for the purposes set out in Section 461. The exceptions provide for disclosure to specified bodies and others performing specified functions.
58. The Conduct Committee hopes to rely on the voluntary co-operation of entities when discharging its responsibilities. Information will therefore usually be sought on a voluntary basis. If information is sought under section 459 of the Act and so on a statutory basis, this will be made clear.

Confidentiality

59. Save as specifically set out in these Operating Procedures the Conduct Committee, the CRR Committee and FRC staff treat all information obtained under these Operating Procedures and 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.
60. Information obtained by FRC staff in the course of enquiries or considerations governed by these procedures may be shared with other FRC staff to the extent necessary for the exercise of any of the FRC's functions.
61. FRRP members normally become aware of enquiries only when they are asked to join a Review Group or otherwise advise on an individual case. Papers relating to each case are filed electronically or otherwise securely in the offices of the FRC and are retained in accordance with the FRC's Records Management Policy. Care is taken to ensure that there is no unauthorised access to such papers within the general FRC offices.

Public reporting of individual cases

62. The extent of public reporting on an individual case depends on the facts and circumstances of the case. The Conduct Committee may ask an entity to refer to its exchanges with the Conduct Committee when the entity makes a change to a significant aspect of its reporting in its next Report in response to intervention by the Conduct Committee ('Committee Reference'). The entity should invite the Conduct Committee to comment on the reference prior to publication of the Report. The Committee Reference should be clear as to the nature of the change, how the underlying issue has been resolved and whether or not the Conduct Committee's enquiries are fully concluded. Where other

matters have yet to be resolved, the Conduct Committee may ask the entity to disclose their nature and potential impact.

63. The Conduct Committee reserves the right for an announcement to be made where, pursuant to intervention under these Operating Procedures, a company makes a significant change, whether corrective or clarificatory, to its financial or corporate reporting. The entity is invited to comment on the draft press notice.
64. The press notice summarises the accounting or legal issues in question, presents, as far as appropriate, the reasoning and approach to the reporting issue by the Conduct Committee, CRR Committee or Review Group, and outlines the remedial action taken by the entity. Where possible the press notice is issued at the same time as the entity effects the corrective or clarificatory action agreed or earlier.
65. In other cases, if the fact of the enquiry has become public, the Conduct Committee may consider releasing its own announcement.
66. The Conduct Committee makes an announcement on application to court and at the end of any court proceedings.
67. Where the FRC considers that the public interest requires it, the FRC may request the Chair of the Conduct Committee to state whether a particular Report is under review. The Chair, may, in his discretion, accede to such a request. He may also make such a statement on his own initiative, following discussion with the Chairman of the FRC, if he believes the public interest requires it. If, following a statement that a Report is under review, the Conduct Committee 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 Conduct Committee's policy is neither to confirm nor deny that it is enquiring into, or has ever enquired into, a particular Report.
68. The Conduct Committee welcomes the practice of companies voluntarily referring to their exchanges of correspondence with the Conduct Committee in their Audit Committee Reports or elsewhere in their Report. The Conduct Committee expects to be invited to comment on such voluntary references in advance of publication.

Other public reporting

69. The Conduct Committee will, from time to time, publicly report the results of its enforcement activity. The Conduct Committee may summarise the detail of cases which have led to corrective or clarificatory action and in respect of which it has issued a press notice or requested a Committee Reference. Entities which publish a Committee Reference will be identified in such reports by the Conduct Committee.
70. The Conduct Committee 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

71. Where information is forwarded by the Conduct Committee to other bodies, where permitted by the Act, the Conduct Committee may inform the entity, but reserves the right not to do so.
72. Save as referred to in these Operating Procedures or in the course of legal proceedings or as required by law the Conduct Committee does not publish or disclose additional information about a case beyond that which is included in any press notice. The Conduct Committee may disclose information to any firm or entity which is engaged to audit or report on the Conduct Committee's activities, but subject to the other provisions of these Operating Procedures no such information will be further disclosed without the consent of the entity concerned.

Communication with complainants

73. The Conduct Committee welcomes well-informed complaints and referrals about the corporate reporting of entities which are within its remit. Any review as a result of a complaint or referral will be carried out in accordance with these Operating Procedures. The Conduct Committee responds to anonymous complaints but notes that they may not be an effective mechanism as the Conduct Committee is precluded both from clarifying the matter at issue with the complainant and reporting on the outcome of any subsequent enquiry.
74. The FRC is a prescribed person under the Public Interest Disclosure Act 1998 which means that the disclosures by an employee to the FRC in relation to matters concerning their employer, which are within the scope of its regulatory duties may be protected if certain criteria are fulfilled. Further details may be found at <https://www.frc.org.uk/About-the-FRC/Making-a-complaint-to-the-Financial-Reporting-Coun/Whistleblowing.aspx>.
75. The identity of any complainant will not normally be revealed to the relevant company. Exceptions may include occasions where:
 - The complainant gives permission to do so;
 - The complaint and identity of the complainant are otherwise made public;
 - The identity of the complainant becomes discoverable during the Conduct Committee's pursuit of a matter to court.
76. A complainant is informed of the outcome of the case drawn to the Conduct Committee's attention by them and, where applicable, of the opening of an enquiry to the extent consistent with the need for confidentiality. Where a press notice is issued in respect of a complaint, the complainant is sent a copy of the press notice. Neither the Conduct Committee, the CRR Committee nor FRC staff enter into further correspondence on the matter.
77. The CRR Committee, FRC staff or a Review Group 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.

HM Revenue and Customs (HMRC)

78. The Conduct Committee will agree, and may from time to time revise, a Memorandum of Understanding with HMRC relating to the disclosure of information by HMRC to the Conduct Committee pursuant to Section 458 of the Act. The Conduct Committee 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 5 – INTERNATIONAL CO-OPERATION

79. In its Accounting Regulation (EC) no 1606/2002, the European Commission requested ESMA's predecessor body to develop a harmonised approach to the enforcement of financial information in the EU. Pursuant to this mandate, the sub-committee on enforcement developed standards and application guidance with which all qualifying national enforcers are expected to comply and which provide for the co-ordination of enforcement activities.
80. The Conduct Committee may, from time to time, propose issues arising from individual cases for discussion at extended sessions of EECS, the forum established under the above standards. The Conduct Committee only identifies the company concerned if it has concluded the case and issued a press notice or the case has otherwise become public.
81. The Conduct Committee is obliged to report certain cases of substance for inclusion in the database established by ESMA to assist in the harmonisation of the application of EU accounting requirements. The Conduct Committee is under a similar obligation to provide input to the Global IFRS Coordination Database under the terms of its Participation Arrangement with IOSCO. The Conduct Committee may consent to the publication of the information so included. The Conduct Committee will not normally consent to the naming of the entity concerned unless it has previously been publicly identified and will only give such consent after discussing the matter with the entity.
82. The Conduct Committee may disclose information pursuant to the protocol between the FCA, the FRC and the US Securities and Exchange Commission to facilitate implementation of the ESMA-SEC work plan.

Approved by the Conduct Committee on 16 February 2016.



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