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11 July 2012

Dear Sirs

THE ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD (THE "AADB"): SANCTIONS GUIDANCE TO TRIBUNALS

Deloitte LLP ("Deloitte") is pleased to provide a response to the AADB's Consultation Paper on its guidance on sanctions to Disciplinary Tribunals.

Deloitte is a Member Firm of the Institute of Chartered Accountants in England & Wales (ICAEW). The majority of our members and employees are members of the various participating bodies. Accordingly, the firm and many of our people are subject to the jurisdiction of the AADB's Accountancy Scheme ("the Scheme").

We agree that a strong and robust discipline process is fundamental for maintaining public confidence in the UK accountancy profession and for enhancing the quality of public reporting. We believe that it is helpful that the AADB proposes to provide guidance to be issued to tribunals on how to approach and determine the appropriate sanction in the event of a finding of misconduct, as it assists in the transparency and fairness of the process to all concerned.

We agree with the overriding objective that sanctions should be evaluated within a framework that is consistent with the current environment and that the primary purpose should be to protect the public interest and not to punish. We agree that in determining sanctions, the guidance should remind tribunals as to the purposes for which sanctions, in the context of professional discipline, are imposed, and highlight the outcomes which sanctions are designed to promote. We also agree that it is helpful to provide tribunals with guidance as to how they might determine an appropriate sanction, listing (on a non-exhaustive basis) factors and circumstances to take into account, and identifying (again, on a non-exhaustive basis) mitigating and aggravating factors. We therefore agree with much of the Draft Guidance attached to the Consultation Paper at Appendix 1.

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However, we have some real concerns regarding certain aspects of the Consultation Paper and Draft Guidance. In summary:

1 There appears to be a belief on the part of the AADB that the current levels of sanctions are insufficient, in particular the level of fines imposed by tribunals, with the consequence that Members and Member Firms are not being adequately deterred from behaving in a manner which would amount to misconduct. We disagree. We believe that the totality of exposures that Members and Member Firm's face, which include the current sanctioning regime of AADB tribunals, provide a very effective and credible deterrent.

2 The proposals reference five different levels of "misconduct", with corresponding (and increasing) levels of fines. We believe that it is inappropriate for sanctions guidance to identify different levels of misconduct, because it could lead to tribunals being misdirected as to the meaning of misconduct, which is already defined in the Scheme. This is illustrated by the fact that some of the levels described in the proposals might not even constitute misconduct.

3 The proposals include the setting of minimum and ranges of tariffs, and establishing mechanisms for the calculation of a fine (by reference to turnover of a Member Firm). We believe that in doing so, the proposals seriously undermine and compromise the independence of the tribunals who, under the Scheme, should have absolute discretion as to the level of any fine.

4 The mechanism proposed by the AADB for calculating the level of fine is a percentage of annual turnover of the Member Firm. We believe that is an irrational mechanism, leading to disproportionate, unfair and inappropriate sanctions, inconsistent with both the purposes of sanctions in the context of professional discipline and the desirable outcomes which such sanctions should promote.

These concerns are explained in more detail in the attached appendices 1-3. Appendix 1 sets out our comments and observations on the Consultation paper. Appendix 2 sets out our comments on the Draft Guidance. Appendix 3 sets out our answers to the 11 specific questions raised in the Consultation Paper.

We would welcome the opportunity to discuss this response to the Consultation Paper in more detail. Should you have any comments or questions please do not hesitate to contact either Ian Joslin (ijoslin@deloitte.co.uk/020 7007 0306) or David Barnes (djbarnes@deloitte.co.uk/020 7303 2888).

Yours faithfully

Deloitte LLP

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APPENDIX 1: COMMENTS ON THE CONSULTATION PAPER ("CP")

(A) SANCTIONS IN THE CURRENT ENVIRONMENT

1. It is accepted by the AADB that the primary purpose of sanctions in a disciplinary context is not to punish but to protect the public interest and care should be taken to ensure that guidance is not produced which undermines or is inconsistent with this primary purpose.

2. The Draft Guidance suggests (see paragraphs 28 and 30) that the primary outcome of a sanction, and the level of the fine in particular, is to create a deterrent. We agree that the deterrent effect is a desirable outcome to be promoted by a sanction and is a factor which should be taken into account in calculating the severity of the sanction. However, it is not the only outcome. In paragraph 10 the Draft Guidance sets out six distinct desirable outcomes. We agree that all those outcomes are desirable and fully support a sanctioning regime which is designed to achieve those outcomes. Deterrence is one of those six, but does not, and should not, have a higher priority than the other five.

3. We agree that sanctions should be evaluated within a framework that is consistent with the current environment. However, we believe that all aspects of the current environment should be taken into account and that it is both necessary and fair to recognise all exposures faced by Members and Member Firms, which include:

   (1) Impact on Reputation: The reporting of claims, disciplinary findings and other adverse regulatory reports, and announcements of AADB investigations impacts adversely on a Member/Member Firm's reputation and brand, who are therefore incentivised to avoid such adverse publicity.

   (2) Unlimited liability: Going forward the focus of the AADB, in line with the focus of the FRC, is on financial reporting. Whilst it is possible under the Companies Act 2006 for auditors to limit their liability, the reality is that in the current environment such agreements with public interest entities are not routinely (if ever) entered into. This means that the auditor invariably faces unlimited liability.

   (3) Offences under the Companies Act: Under section 507 Companies Act 2006, if an auditor knowingly or recklessly causes an audit report to include any matter that is misleading, false or deceptive in a material particular, that auditor will have committed an offence. This was a new offence created under the 2006 Act.

   (4) AIU Reporting: Annually the AIU inspects the four largest audit firms (and, less frequently, other firms), focussing on the quality of the firms' audit work for public interest entities. The AIU reports publicly on a firm by firm basis on its findings. These reports provide a public view as to the quality of each firm's audit work. This reporting mechanism can be seen as a form of regulatory sanction, because the AIU can – and does – publicly criticise firms if it believes that an audit has not been conducted to an appropriate standard. The AIU's criticisms can stand even where they would not amount to misconduct (or negligence).

   The deterrent effect of the AIU reporting regime is enhanced because the AIU is commenting upon recent work. Whilst we acknowledge, and welcome, the AADB's stated objective to speed up what has historically been a very drawn-out process and bring matters to a conclusion in a much shorter time-frame, it is inevitable that the work which is the subject of an AADB tribunal hearing will be considerably more

historic, and therefore, of less relevance to an assessment of the quality of a firm's current and future work.

(5) Impact of defending regulatory action: We think it is important that the AADB and tribunals recognise the impact that a regulatory investigation and the laying of formal complaints has on Members and Member Firms. In addition to being hugely disruptive to their practices, the impact on a Member personally of having their work challenged and criticised (the merits of which will not be known until the end of the process) cannot be overstated. The mere fact of the laying of formal complaints and the publication of that fact can severely damage their personal reputation and character and put them under enormous stress.

4. The totality of these exposures provide individually and collectively an effective and credible suite of deterrents against making the types of mistakes or acting in a way which might amount to misconduct.

5. If the suite of deterrents was ineffective, it would be reasonable to expect there to be an increasing number of matters requiring investigation and adverse disciplinary findings. However, the AADB's own records demonstrate that this has not happened: it has only opened investigations into 24 matters in 8 years with, to date, few findings of misconduct.

6. Many sanctions exist to deter intentional or reckless flouting of standards/laws/regulations. However, we believe that (save in exceptionally rare cases) Members and Member Firms are not intent on, or reckless as to whether they are, breaching standards/laws/regulations. To the contrary, we believe that the vast majority of Members and Member Firms are intent on delivering quality services, to their clients, and acting in compliance with standards/laws/regulations. If they have committed a breach, it is highly likely to have been an unintentional mistake.

7. We accept that if it can be shown that the Member Firm has taken a deliberate decision to flout the rules, the Member Firm should be sanctioned, and that such sanction should be at a significant level so as to act as a deterrent against acting in that way in the future. However, cases of systemic and deliberate or reckless breaching of regulations are likely to be exceptionally rare in Member Firms.

8. Whilst the AADB is right to take steps to ensure that its sanctioning regime is up to date and fit for purpose, we do not see any reason to justify a substantial change in the quantum of fines to be imposed for misconduct, and we do not accept that there is a need for Members and Member Firms to be much more heavily fined if they make mistakes.

9. This issue of the extent to which fines needed to be increased to reflect current conditions was considered by the tribunal in the PwC (JP Morgan) case. In that case the Executive Counsel sought to argue for a very significant increase in the level of a fine, arguing initially for a £44m fine for PwC and subsequently a £6m fine. The tribunal rejected the Executive Counsel's submissions, and the fine for PwC was set at £1.4m (after setting a starting point of £2m). The tribunal also stated that it doubted whether aggravating factors would have taken the fine beyond £5m, although it did not rule out exceptional cases where this might be the case. We are concerned that the AADB, having failed to convince an independent tribunal established under its own scheme to increase the level of sanction to a level which it (the AADB) considered appropriate, has decided to achieve that objective through the use of influential (although non-binding) sanctions guidance. We do not believe that this is appropriate.

10. In the U.S, the PCAOB can impose financial penalties up to $100,000 per violation by a member and up to $2m per violation by an accounting firm. The SEC, in regulating the securities industry, can only impose a maximum penalty of $150,000 per violation for individuals and $750,000 for organisations (in exceptional circumstances this can be increased). We do not believe that there is any justification for the UK regulatory authorities imposing substantially higher fines than their US counterparts. It is also noteworthy that In Germany the maximum fine which can be imposed by a professional tribunal is €500,000.

(B) LIABILITY FOR MISCONDUCT

11. The CP identifies five different levels of sanctions, with the intention that the tribunal should seek to place the misconduct within one of those five levels, and then to apply the tariff for the relevant level.

12. We are concerned that the effect of this approach is to use the sanctions guidance to define what is meant by misconduct. The Scheme defines an "act of misconduct" as meaning *"any Member's or Member Firm's conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm."* We do not believe that sanctions guidance should seek to suggest that something else might constitute misconduct. For example, level 1 states that: *"The misconduct was isolated, unintended, any potential harm was limited in degree..."* . When read in conjunction with level 3, which states that: *"The misconduct was negligent or incompetent..."*, it would seem to suggest that for a level 1 finding, the "misconduct" is likely to fall someway short of being "*negligent or incompetent*". We think that is difficult to reconcile with the definition of misconduct in the Scheme or consistent with the pursuit of the public interest in such cases.

13. We therefore are concerned that the inclusion of these 5 levels of "misconduct" could cause tribunals to be misdirected as to meaning of misconduct. We do agree, however, that the guidance should make it clear that the more serious the misconduct, the more severe the sanction.

14. The Scheme provides for Member Firms to be vicariously liable for the misconduct of their partners and staff where they are acting in the course of their employment with the actual or ostensible authority of the firm. Liability to sanction in these circumstances is most likely to occur in the context of misconduct by an engagement partner/team on a single (or series of related) engagement(s). The sanction to be imposed on the Member Firm should reflect the fact that the Member Firm has not, at an institutional level, been culpable. Member Firms can also be liable for systemic issues, which might properly be characterised as misconduct of the Member Firm itself at an institutional level. Again, the sanction should reflect the fact that liability arises in this way. We think, therefore, that the sanction should reflect the basis for the Member Firm's liability, and it would be helpful for the guidance to address this point.

15. We agree that every Member must accept responsibility for their personal misconduct and should be sanctioned accordingly. However, in considering whether a Member is guilty of misconduct, it is necessary to consider, but only to consider, that Member's personal actions. The actions of others are not relevant, save in evaluating the adequacy of the actions of the Member.

16. In paragraph 3.22 of the Draft Guidance, it states that "*Even though the audit partner may bear primary responsibility for the conduct of that audit, multiple individuals within the Member Firm will normally have been involved in any particular audit*". This could be construed as suggesting that partners (as individual Members) should bear vicarious liability for the misconduct of others, which is not (and should not be) the case.

(C) DETERMINING THE RIGHT SANCTION

17. The sanctions available to a tribunal fall into 4 categories:

    (1) Sanctions which signal disapproval of the Member or Member Firm's conduct – a reprimand or severe reprimand;

    (2) Sanctions which affect a Member or Member Firms' ability to practise or to act in particular capacities or perform certain functions – ineligibility for registration or authorisation;

    (3) Sanctions that affect a Member's entitlement to hold themselves out as a chartered accountant – exclusion from membership; and

    (4) Monetary sanctions - a fine and a waiver or repayment of client fees.

18. Whilst we anticipate that much of the debate generated by the CP will focus on the last of these, it is important that the sanctions guidance stresses that monetary sanction is only one element of a suite of sanctions available to the tribunal.

19. The FRC has recently published a consultation paper on proposed amendments to the Scheme. Whilst the proposed amendments do not include any additional sanctions (save for interim sanctions), we believe that the FRC should give careful consideration to whether there may be other sanctions which could assist in achieving the FRC's objectives of maintaining public confidence in the UK accountancy profession and enhancing the quality of public reporting. We will in due course submit a response to that consultation paper, but for present purposes we would note that the PCAOB in the US has a range of other sanctions available to its disciplinary tribunals, such as temporary or permanent limitations on activities, the requirement of additional professional education or training, the engagement of an independent monitor to observe and report on compliance, the engagement of counsel or consultant to design policies to effectuate compliance, the requirement to adopt or implement policies or undertake other actions, and the obtaining of an independent review and report on one or more engagements.

20. We would strongly support amendments which provide a broader, flexible and ultimately more responsive suite of sanctions which could be imposed to address the misconduct and its cause.

(D) TURNOVER-BASED FINES AND TARIFFS

21. The CP (and the Draft Guidance) confirms that the sanction to be imposed once misconduct has been proven is, under the Scheme, entirely at the discretion of the independent tribunal. This is an essential characteristic and strength of the Scheme and care must be taken to ensure that this independence is not compromised. Insofar as the Draft Guidance seeks to

interfere with the exercise of that discretion, we believe that it risks compromising the independence of the tribunal and, therefore, damaging the integrity of the Scheme. We believe that the setting of tariffs falls into this trap. For example, if minimum tariffs are intended as guidance only, then by definition they cannot be a minimum and there is no purpose to be served by having them. The real danger is that tribunals may feel influenced in setting a level of sanction which falls within a range of tariffs (for example, is no less than the minimum tariff), meaning that the essential characteristic of the Scheme, that is the independence of its tribunals, will have been compromised.

22. The CP introduces the concept of "market power" as being a suitable basis for calculating fines for Member Firms. We doubt whether "market power" is measurable or even relevant to determining the level of a fine in the context of professional misconduct unless the misconduct somehow can be shown to have helped to generate market power.

23. Notwithstanding that the tribunal in the PwC (JP Morgan) case, having had the benefit of full argument before it by both leading counsel for PwC and leading counsel for the Executive Counsel, considered it "irrational" to approach sanctions for advisers in the same way as for primary actors, it appears that the AADB has looked to apply a similar approach to fines as the approach followed by the FSA (which is primarily focussed on primary actors). Under its current policy on financial sanctions (Policy Statement 10/4 "Enforcement financial penalties" dated March 2010) the FSA have said: "*Where the breach relates to a specific product or products, we will look at the revenue generated by those products. Where there are a series, or categories of products, all of which fall within in a particular business area, then we are more likely to take the revenue of that business area*". This is defined as being the "*relevant revenue*". The FSA then looks to apply a percentage of that "relevant revenue" as the starting point for determining the level of fine.

24. The FSA's approach is to link the fine with the revenue which has been earned from the product which has been tainted by the breach or, in the case of systemic issues, the revenue from the business area tainted by those issues, recognising that a problem with one product does not (absent systemic issues) contaminate another product. This approach does seem to achieve a degree of proportionality. The logic seems to be that the revenue will have been inappropriately earned, and therefore the sanction is to deprive the organisation of a proportion of that revenue, the proportion being dependent upon the degree of inappropriateness.

25. However, applying this approach to Member Firms is not logical, because Member Firms do not deal in "products". Rather, they provide bespoke services to their clients, tailored to meet those clients' specific circumstances. For example, a statutory audit for one client is entirely separate from a statutory audit for another client. It is also why an error made on an audit for one client will not in any way contaminate an audit for a different client.

26. Adopting the FSA's approach, the AADB also proposes a percentage of revenue as being the starting point for a fine. However, rather than looking to define the "relevant revenue" as being the revenue which has been earned from the equivalent of the product which has been tainted by the breach (the equivalent being the relevant engagement), or in the case of systemic issues, the relevant business area, the CP (and Draft Guidance) suggests that the "relevant revenue" should be the entire turnover of the firm, which we believe is entirely inappropriate.

27. Further, the logic behind the FSA's approach, which is to deprive the Member Firm of a proportion of inappropriately earned revenue, does not apply. It cannot be suggested that the revenue earned on an engagement where there has been no breach has been inappropriately earned, so there is no logical basis to deprive the Member Firm of a proportion of that revenue.

(E) FACTORS AND CIRCUMSTANCES TO TAKE INTO ACCOUNT

28. Paragraphs 31 and 48 of the Draft Guidance set out non-exhaustive lists of factors and circumstances, and aggravating and mitigating factors, which the tribunal should take into account in determining the level of a fine. We agree that these are sensible core (but non-exhaustive) lists, although we would add the need to consider the basis for liability of a Member Firm (vicarious liability or institutional misconduct) as explained above.

(F) COSTS

29. We believe that costs should be taken into account in determining the sanction. First, any award of costs against a Member or Member Firm should be proportionate. The tribunal should consider the reasonableness of those costs and should only award costs which relate to the findings of misconduct. Secondly, in determining the sanction, in particular the quantum of a fine, we think that the tribunal should take into account the quantum of any costs awarded against the Member/Member Firm. In line with the concept of proportionality, it is the totality of the award which is relevant.

APPENDIX 2: SPECIFIC COMMENTS ON THE DRAFT GUIDANCE

These comments should be read in conjunction with our comments and observations on the Consultation Paper as set out in Appendix 1.

Paragraph	Comment
1 – 27	No substantive comments.
28 -30	The Draft Guidance should specify the need to take into account all purposes and desirable outcomes as set out in paragraphs 8 and 10 of the Draft Guidance. We disagree that the "*effect of a fine*" should be a factor and note that this is not one of the stated purposes or desirable outcomes. Also, whilst the Draft Guidance states that "*There is no upper limit on the fine*", it should also state that there is "*no lower limit on the fine*" either, otherwise the Draft Guidance is not balanced.
31	We agree with this core (but non-exhaustive) list of factors and circumstances, subject to adding the need to consider the basis for liability of a Member Firm (vicarious liability or institutional misconduct).
32	We fundamentally disagree with the use of tariffs (whether minimum and/or a range) and with the use of a percentage of turnover as being the basis for calculating a fine. We refer to our comments and observations in Appendix 1 which explains why we believe this approach is inappropriate. We do not believe that it is necessary to guide tribunals in this way.
33	If regardless of the comments received the AADB decides to press ahead with its proposals we believe that for a Member, income after tax should be used as an indicator of financial means, as we would not expect any fine to be tax deductible and it would, therefore, be payable out of net income. We also believe that the relevant income is the income in year that the misconduct occurred, not in the year preceding the finding as the Draft Guidance proposes. Otherwise a Member could be prejudiced by delays on the part of the AADB and the Executive Counsel in progressing an investigation.
34	No substantive comments.
35-36	We do not believe that further adjustments are necessary, as all relevant factors and circumstances, including mitigating and aggravating factors, will already have been taken into account by the tribunal.
37-38	No substantive comments.
39-45	We think that it would be sensible for the tribunal to be required to obtain the comments and representations from the relevant participating body if the tribunal is considering preclusion or exclusion. Those participating bodies will have far more experience of such sanctions, and being required to obtain their comments and representations will help to ensure consistency across the profession for such sanctions.
46	We do not agree that the fact that actions are repeated is a factor tending to show that the misconduct was deliberate. It could equally (and indeed is perhaps more likely to)

show that the Member/Member Firm misunderstood a point, and repeated that misunderstanding.

47 We would suggest that the risk of falling short of standards should be real and substantial. We also believe that merely failing adequately to mitigate the risk or carry out checks does not of itself indicate recklessness (the failure could be an error of judgement). Rather, we would suggest that an intentional decision not to mitigate whilst knowing that there was a real and substantial risk which required mitigation or checking would be a better indicator of recklessness.

48 No substantive comments.

49 We do not believe that a tribunal is ever in a position to consider whether a previous AADB sanction has failed to improve standards, because the tribunal will not have visibility of all the facts of the previous matters, or indeed of the quality of work being performed across the profession. Accordingly, we do not consider that an adjustment on this basis could be justified. We also do not believe that a tribunal is in the position to assess the risk of similar misconduct by other Member Firms, because the tribunal will not have the relevant degree of knowledge as to how other Member Firms operate. We do not believe that specific adjustments are required to ensure that the proposed sanction achieves the objectives of a sanction (one of which is deterrence, but there are a variety of others), because that will be already have been taken into account by the tribunal.

50 – 56 As a concept, we agree that discounts should be available where admissions have been made by the Member/Member Firm. However, we do not think that there should be a formalised and relatively inflexible discount scheme as is described in the Draft Guidance. The level of an appropriate discount will depend upon numerous factors, including on how well pleaded and evidenced the Executive Counsel's case is at any particular stage. Accordingly, we believe that there should be far more flexibility, and that prescribed discounts at certain stages inappropriately fetters the discretion of the tribunal.

57 No substantive comments.

Transition We note that instead of containing any transitional provisions, the Draft Guidance is stated to apply to all open matters. Insofar as the Draft Guidance sets out good practice in the setting of sanctions, explaining the purpose of sanctions and desirable outcomes, describing relevant factors and circumstances to be taken into account, and identifying aggravating and mitigating factors, we have no issue with such content being applicable to all open matters. However, insofar as the Draft Guidance sets out mechanisms for calculating fines (such as minimum tariffs, turnover-based calculations, and so on) and discounts (such as a specified discount at a specified point in the process), such content should not apply to open matters, but only to investigations commenced after the Draft Guidance is issued in final form. If the Draft Guidance were to apply to open matters, Members/Member Firms may have been prejudiced by delays by the Executive Counsel to date to progress investigations and proceedings and will have been responding to those investigations and proceedings by reference to a Scheme which did not include such mechanisms.

APPENDIX 3: RESPONSES TO THE 11 SPECIFIC QUESTIONS

Our detailed comments and observations in Appendices 1 and 2 provide further explanation for these responses which, should, therefore, be read in conjunction with those comments and observations.

1. **Do you agree with the Board's objectives and approach to sanctions guidance?**

   We agree with the overriding objective that sanctions should be evaluated within a framework that is consistent with the current environment and that the primary purpose should be to protect the public interest and not to punish. We agree that in determining sanctions, the guidance should remind tribunals as to the purposes for which sanctions in the context of professional discipline are imposed, and highlight the outcomes which sanctions are designed to promote. We also agree that it is helpful to provide tribunals with guidance as to how they might determine an appropriate sanction, listing (on a non-exhaustive basis) factors and circumstances to take into account, and identifying (again, on a non-exhaustive basis) mitigating and aggravating factors. We therefore agree with much of the Draft Guidance. However, for the reasons explained in more detail in our comments in Appendices 1 and 2, in certain respects we believe that the approach adopted in the CP and Draft Guidance is flawed, and will lead to disproportionate, unfair and inappropriate sanctions, inconsistent with both the purposes of sanctions in the context of professional discipline and the desirable outcomes which such sanctions should promote.

2. **Do you agree that Tribunals need a clear framework for sanctions which reflects the nature of its cases and the wider context in which the accountancy profession operates today?**

   As we have said in response to question 1, we agree that sanctions should be evaluated within a framework that is consistent with the current environment. However, for the reasons explained in more detail in our comments in Appendices 1 and 2, it is imperative that the framework does not undermine or compromise the independence of tribunals.

3. **Do you agree that the sanctions imposed by Tribunals should act as a credible deterrent and be proportionate to the seriousness of the misconduct and to all the circumstances of the case, including the financial resources of Members and the size and financial resources of Member Firms?**

   We agree that sanctions should act as a credible deterrent, but as we explained in our comments in Appendices 1 and 2, not to the exclusion of, or in priority to, the other purposes for which sanctions are imposed or other desirable outcomes. We agree that sanctions should be proportionate to the seriousness of the misconduct and to all of the circumstances of the case. We do not agree that fines should be fixed by reference to a Member Firm's turnover as is proposed in the Draft Guidance.

4. **Have we included the sorts of factors in the sanctions guidance that you would expect to see taken into account by Tribunals?**

   We agree with the factors and circumstances to be taken into account and the mitigating and aggravating factors listed (on a non-exhaustive basis) in the Draft Guidance, save for an addition in relation to Member Firms (see our comments in Appendix 1).

5. **Are there any factors you believe Tribunals should take into account when deciding sanction that we have overlooked?**

We do think it would be sensible, in the event that a tribunal is considering preclusion or exclusion, to obtain the comments and representations of the relevant participating body.

6. **Do you agree that there needs to be an adjustment in the level of fines imposed in AADB cases?**

As we have said in response to question 1, we agree that sanctions should be evaluated within a framework that is consistent with the current environment. We do not agree that this necessarily entails adjusting fines purely for the sake of doing so. The issue as to an appropriate quantum of a fine in the current environment was expressly considered very recently by the tribunal in the PwC (JP Morgan) case.

7. **If so, what adjustment do you consider to be appropriate?**

See our response to question 6.

8. **What is your view of the alternative mechanisms proposed for calculating fines?**

We do not agree that fines should be fixed by reference to a Member Firm's turnover as is proposed in the Draft Guidance. We consider that the mechanisms proposed for calculating fines are flawed and will result in disproportionate, unfair and inappropriate fines, inconsistent with both the purposes of sanctions in the context of professional discipline and the desirable outcomes which such sanctions should promote.

9. **What level of turnover/income do you consider would be appropriate in respect of each mechanism?**

See our response to question 8. In addition, as we observed in Appendix 1, the tribunal in PwC stated that it doubted whether aggravating factors would have taken a fine beyond £5m (although it did not rule out exceptional cases where this might be the case).

10. **Do you agree that Tribunals should not take account of the cost that it is considering awarding against a Member or Member Firm when determining the appropriate level for a fine?**

We believe that costs should be taken into account when determining the appropriate level of a fine.

11. **Do you have any other comments about the proposed structure or content of the sanctions guidance?**

We have made a number of comments and observations throughout this response concerning the proposed structure and content of the sanctions guidance, and we would request that the AADB carefully considers all our comments and observations. We believe that if the AADB amends its Draft Guidance to reflect those comments and observations the robustness of the disciplinary process will be strengthened.