

January 2021

Publication Policy (Audit Enforcement Procedure)

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AEP PUBLICATION POLICY

Introduction

1. This policy applies to matters which are the subject of a decision under the Financial Reporting Council (“FRC”)’s Audit Enforcement Procedure (“Enforcement Procedure”).
2. As the Competent Authority for Audit Regulation in the UK, pursuant to the EU Audit Regulation (EU) 537/2014 and the EU Audit Directive 2014/56/EU as implemented by the Statutory Auditors and Third Country Auditors Regulations 2016 (“SATCAR 2016”), the FRC is ultimately responsible for the enforcement and oversight of the adequate execution of statutory audit, and is required to retain and perform directly the task of sanctioning the inadequate execution of Public Interest Entity audits.
3. Publicity about actions taken by the FRC under the Enforcement Procedure contributes to transparency and public confidence in the FRC’s enforcement arrangements as well as informing the public and statutory auditors of, and deterring against, unacceptable and inadequate execution of statutory audit.
4. The FRC is required by SATCAR 2016 to publish details of any Sanctions that it imposes under the Enforcement Procedure (“Mandatory Announcements”). In certain cases, the FRC may be prohibited from publishing certain details regarding the Sanctions imposed.¹ The FRC may also publish other matters which are the subject of a decision under the Enforcement Procedure (“Discretionary Announcements”).
5. In respect of Discretionary Announcements, it is a matter for the FRC’s Conduct Committee (“Conduct Committee”) to decide whether to publish such a matter (save where a decision to open an investigation has been retained by or referred to the Board, in which case the associated publication decision will also be made by the Board. In such cases, references in this Policy to the ‘Committee’ shall also mean the Board). Each such decision is taken on its own merits and on a case-by-case basis.

Mandatory Announcements

6. The FRC is required by SATCAR 2016 to publish the details of Sanctions it imposes under the Enforcement Procedure. Sanctions can be imposed by the FRC in:
 - a. Final Decision Notice by Executive Counsel;²
 - b. Final Decision Notice by the Enforcement Committee;³
 - c. Final Decision Notice and report by the Tribunal;⁴
 - d. a Final Decision Notice and report by the Appeal Tribunal;⁵ and
 - e. any decision in relation to an Interim Order made by the Enforcement Committee or the Tribunal or Appeal Tribunal.⁶

¹ See paragraph 18 below

² Rule 18 AEP

³ Rule 25 and Rule 27 AEP

⁴ Rule 54 AEP

⁵ Rule 67

⁶ Rule 60

Discretionary Announcements

7. The FRC may, but is not required to, publish matters relating to:
 - a. the commencement of investigations under the Enforcement Procedure;
 - b. the outcome of such investigations, where a Sanction has not been imposed;
 - c. decisions to accept undertakings from a person in place of a Sanction under the Enforcement Procedure; and
 - d. the acceptance, or declining, of a referral for investigation under the Enforcement Procedure from another regulatory body to the FRC.
8. Decisions to exercise the FRC's discretion under paragraph 7 will be taken by the Conduct Committee, who will consider whether it is appropriate in all the circumstances to make such an announcement. The Conduct Committee will take into account the factors set out at paragraphs 10 to 14 below as relevant before coming to its conclusion.
9. Other announcements may be made by the FRC where the FRC considers that such an announcement is desirable to achieve its objectives or would otherwise be in the public interest.

Decisions to commence an investigation (paragraph 7(a))

10. The Conduct Committee will not normally decide to publish the fact of its decision to investigate unless it considers:
 - a. that such publication is necessary in all the circumstances; and
 - b. any potential prejudice to the subject of an investigation is outweighed by the factors in favour of publication.
11. In order to determine that an announcement is necessary in all the circumstances, the Conduct Committee must consider that an announcement will:
 - a. help to maintain public confidence in Statutory Auditors;
 - b. help to maintain public confidence in the regulation of Statutory Auditors;
 - c. protect users of financial statements;
 - d. protect investors;
 - e. help to prevent malpractice that is potentially widespread;
 - f. contribute to the effectiveness of the investigation itself, for example by bringing forward witnesses;
 - g. help to allay concern; or
 - h. help to contain speculation or rumour.
12. Where the Conduct Committee has exercised its discretion to publish its decision to commence an investigation under the Enforcement Procedure, and it has been decided that no further action is to be taken following that investigation, the Conduct Committee

should also publish the outcome of that investigation unless there is a good reason not to. Such closure announcements will be retained on the FRC's website for a period of 2 years from the date of their publication save where the Committee decides, on the submission of a party or at the Committee's discretion that such announcements should be retained for a longer period. The FRC will use all reasonable endeavours to advise subjects of a closed investigation of the opportunity to seek an extension with 28 days' notice before the announcements are due to be removed from the website.

All other matters (Paragraph 7(b) to (d))

13. In relation to matters covered by paragraphs 7(b) to (d) above, it will not normally be appropriate for the Conduct Committee to decide to publish those matters other than when the fact of its investigation has already been published.
14. The factors which are to be taken into consideration when deciding whether it is appropriate to publish an announcement in relation to such a matter include the:
 - a. level of public interest in relation to the matter under consideration;
 - b. likely impact of such an announcement on public confidence in the regulation of Statutory Audit;
 - c. likely impact of such an announcement on fairness to all concerned in relation to the matter in question;
 - d. legitimate purpose served by such an announcement; and
 - e. requirements imposed by legislation, including applicable data protection laws, the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("the EIRs") to either publish such information or to release such information into the public domain upon request.

Content of Announcements

Mandatory Announcements

15. Mandatory announcements will include the fact that a Sanction has been applied, and the type of Sanction.
16. The FRC must include in mandatory announcements:
 - a. information concerning the type and nature of the contravention;
 - b. the identity of a person sanctioned save where the circumstances in paragraph 18 apply; and
 - c. where a Sanction is subject to appeal, information concerning the status and outcome of any appeal.
17. Where a Respondent has agreed to early resolution of the matter and accepted a Decision Notice issued before the matter is referred for a Hearing before a Tribunal, the FRC will usually include in the mandatory announcement:
 - a. an acknowledgement of the Respondents' co-operation; and
 - b. the amount or proportion of any discount to Sanction applied for early settlement.

18. The FRC is prohibited from publishing the identity of a person⁷ sanctioned in the mandatory announcement where:
- a. such person is an individual and the competent authority considers the publication of personal data would be disproportionate;
 - b. publication would jeopardise the stability of financial markets;
 - c. publication would jeopardise an ongoing criminal investigation; or
 - d. publication would cause disproportionate damage to any institution or individual involved.
19. Subject to the above, decisions on the content of the mandatory announcement will be taken by the FRC Executive. The FRC Executive may, but is not required to, seek the guidance of the Conduct Committee when deciding if the circumstances set out in paragraph 18 apply.

Discretionary Announcements

20. Where the Conduct Committee decides to publish a matter relating to a decision to commence an investigation, the announcement will include sufficient information to enable the reader to understand in broad terms the matter which is being investigated.
21. The Committee will not normally publish the names of a Statutory Auditor Respondent whose conduct is under investigation except where:
- a. failure to do so would defeat the purpose of the announcement, for example because it would not be possible to understand the nature of the matters under investigation without doing so;
 - b. the identity of the person is already a matter of public knowledge;
 - c. the identity of the person is obvious from the description of the matter; or
 - d. there are other circumstances which, in the opinion of the Committee, make it appropriate to identify individuals under investigation.
22. Where the Committee decides to publish an announcement regarding the outcome of an investigation, publication will include:
- a. sufficient information to enable the reader to understand in broad terms the matter under investigation;
 - b. the outcome of the investigation;
 - c. whether or not the Executive Counsel has issued a Final Decision Notice;⁸
 - d. whether or not the Executive Counsel has issued a Notice of Cancellation;⁹

⁷ It is not just a name or job title that may reveal the identity of a person. Information regarding the type and nature of the contravention alone may allow the individual to be identified (if the facts are unique, for example)

⁸ Rule 18 AEP

⁹ Rule 16 AEP

- e. whether or not the Executive Counsel has agreed with the Respondent that the case be referred directly for a Hearing;¹⁰ and
- f. subject to paragraph 18 above, the identity of the Respondent investigated when:
 - i. the Respondent has been previously identified;
 - ii. the Executive Counsel has issued a Final Decision Notice; or
 - iii. the Executive Counsel has agreed with the Respondent that the case be referred directly for a Hearing.

23. Subject to the above, the content of a discretionary announcement will be determined by the FRC Executive.

Timing of Publication

Mandatory Announcements

- 24. The FRC is required to publish mandatory announcements as soon as reasonably practicable immediately after the person sanctioned has been informed of the decision.
- 25. Mandatory announcements will be published on the FRC's website and will remain available for the following periods:
 - a. where a Sanction issued by the FRC is not appealed, for at least seven years from the date that the appeal should have been lodged pursuant to Rule 65;
 - b. where a Sanction issued by the FRC is appealed, for at least seven years from the date of determination of the appeal.

Discretionary Announcements

- 26. Discretionary announcements, if made, will normally be published promptly but the Conduct Committee retains discretion to delay publishing them, or parts of them, if it considers there are public interest reasons and/or other reasons under any other applicable laws, such as applicable data protection laws, FOIA or the EIRs, for doing so.
- 27. Discretionary announcements will be published on the FRC's website and will remain available for a period of at least seven years from the date of the relevant decision.

GENERAL PROVISIONS

Third Parties & Advance Notification

- 28. Save as otherwise set out in this policy, the identity of third parties will usually be anonymised in any announcements and/or related documents published under this Publication Policy, unless or to the extent that publication of that party's identity is considered fair and necessary in all the circumstances and is in compliance with any applicable data protection laws.
- 29. The identity of the audited entity will usually be published in any announcements and/or related documents published in relation to the outcome of an investigation under the

¹⁰ Rule 15 AEP

Enforcement Procedure, unless or to the extent that identification of the audited entity is considered to be unfair and unnecessary in the circumstances.

30. Save where the FRC Executive (for mandatory announcements) or the Committee (for discretionary announcements) decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Respondent and, where appropriate, any other party named or identifiable in an announcement will be given a copy of its proposed terms a minimum of seven days before its intended publication. Where any comments are received in response to such advance notice and to enable the FRC to give due consideration to the comments received, the announcement will not usually be published before the expiry of a further seven days from the original intended publication date unless otherwise agreed or where the FRC Executive or Conduct Committee considers earlier publication to be in the public interest.
31. Advance notification of publication of an announcement under this Publication Policy will usually be given to any regulatory body or prosecuting authority with a known interest in the matter in question.
32. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual inaccuracy.

Price Sensitive Information

33. The FRC shall have due regard to the potential risk of the release of price sensitive information which may arise out of or in connection with announcements made under the Enforcement Procedure and shall keep a price sensitive communications policy in operation and under review from time to time in the interests of ensuring the simultaneous release to the market under appropriately controlled conditions of such information. The advance notice period in paragraphs 30 and 31 will not apply in these circumstances.

Manner of Publication

34. Save as otherwise set out in this Publication Policy or required by law, publication will usually take the form of:
 - a. a short statement on the FRC's website that includes the information set out in paragraph 6 in relation to mandatory announcements; and/or
 - b. brief factual details relating to the decision or action in question in relation to discretionary announcements; and
 - c. where considered appropriate in all the circumstances, a link to any related detailed decisions or documents.
35. In addition, press announcements will usually be published and circulated in a manner determined by the FRC Executive. The press notice may contain a link to the website statement and any accompanying report.
36. In certain circumstances, and where not contravening the FRC's statutory publication requirements, the FRC may decide to vary the form or procedure in which it publishes an announcement made under this Policy.

**Issued by the Board of the FRC
1 January 2021**