



ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

THE ACCOUNTANCY SCHEME REVIEW

A CONSULTATION PAPER

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This consultation will end on **11 April 2008**

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One Introduction

- 1.1 The Accountancy and Actuarial Discipline Board¹ (AADB) is the UK's independent, investigative and disciplinary body for accountants and actuaries. Its focus is on the investigation and hearing of public interest cases where there may have been misconduct on the part of Members or Member Firms of the accountancy profession in the UK or Ireland who are subject to its disciplinary scheme and Members of the actuarial profession in the UK.
- 1.2 The AADB is an operating body of the Financial Reporting Council (FRC). The FRC is the UK's independent regulator responsible for promoting confidence in corporate reporting and governance and the principal independent regulator of the accountancy and actuarial professions in the UK. The work of the FRC is funded by the accountancy and actuarial professions, major users of accountancy and actuarial services, and, in relation to its accountancy and audit responsibilities, the Government.
- 1.3 Effective, independent and transparent disciplinary arrangements are considered necessary as a means of protecting the public interest, of underpinning public confidence in the accountancy and actuarial professions in the UK and Ireland and encouraging the professionalism of accountants and actuaries. Independence in the disciplinary process is assured through the involvement of a majority of lay members on the AADB.
- 1.4 The AADB's disciplinary scheme for the accountancy profession (the Accountancy Scheme) came into effect on 13 May 2004. After two years of operation, in the furtherance of its stated aims and objectives, the AADB (the Board) decided it would be appropriate to conduct a formal review of the Accountancy Scheme. The first hearing of a formal complaint by a disciplinary tribunal under the AADB Scheme, which arose out of the collapse of the Mayflower Corporation plc, took place in the autumn of 2006 and the case was concluded in January 2007. The Board extended the review to take into account the issues highlighted by the hearing.
- 1.5 This paper sets out for consultation the changes to the Accountancy Scheme proposed by the Board as a result of the review and the reasons for the proposed changes. The consultation is aimed at the accountancy and actuarial professions, the wider business community, regulatory and governmental bodies and other parties with an interest in professional disciplinary arrangements, and their representatives, in England and Wales, Scotland, Northern Ireland and Ireland and the wider public.
- 1.6 This consultation is being conducted in line with the Code of Practice on Consultation issued by the Better Regulation Executive of the Department for Business, Enterprise and Regulatory Reform (BERR).

¹ Formerly the Accountancy Investigation and Discipline Board (AIDB)

- 1.7 A preliminary Regulatory Impact Assessment of the proposals has been prepared and can be found at section seven. This indicates that those subject to investigation and disciplinary proceedings under the Accountancy Scheme and the accountancy bodies who participate in the Accountancy Scheme (the Participants) are most likely to be affected by savings or additional costs as a result of implementing the changes proposed by the Board. In addition, all organisations who contribute to FRC funding will be affected. The wider business community and the public may also be indirectly affected.
- 1.8 A list of the organisations to whom this consultation paper has been sent is attached at Annex D. This list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subjects covered in this paper. Responses are sought by **11 April 2008**. Details of how to respond can be found in section eight.
- 1.9 The Accountancy Scheme provides for the agreement of the Participants and of the FRC to any changes to the Scheme. The Participants are fully informed of the detailed proposed changes as set out in this consultation document.

Two Disciplinary Arrangements for the Accountancy Profession

- 2.1 Each of the six members of the Consultative Committee of Accountancy Bodies (CCAB) participates in the Accountancy Scheme. They are: *the Association of Chartered Certified Accountants (ACCA), the Chartered Institute of Management Accountants (CIMA), the Chartered Institute of Public Finance and Accountancy (CIPFA), the Institute of Chartered Accountants in England and Wales (ICAEW), the Institute of Chartered Accountants in Ireland (ICAI) and the Institute of Chartered Accountants of Scotland (ICAS).*
- 2.2 The vast majority of accountants in the UK and Ireland choose to train and qualify under the auspices of one of the accountancy bodies detailed above and subscribe to be a member of such a body. Members and Member Firms of the accountancy bodies in the UK are subject to the rules and regulations of the body of which they are a member. Each accountancy body operates its own disciplinary arrangements to deal with complaints of unsatisfactory conduct by their Members. They are primarily responsible for investigating and disciplining their Members and, where appropriate, Member Firms.
- 2.3 However, separate disciplinary arrangements exist for those cases which are considered to be a matter of public interest. Public interest cases are dealt with by the AADB, which operates independently of the accountancy bodies.
- 2.4 The introduction of a greater degree of independence from the profession being regulated has been a common feature of the disciplinary arrangements of a number of other professions in recent years, such as the health professions, the legal profession and the police.

Background to the AADB

- 2.5 The AADB was established in October 2001 following consultation by the Government on its proposals to establish an independent framework of regulation for the accountancy profession and underpin it with the creation of the Accountancy Foundation². The Government identified three key criteria against which to judge this framework: effectiveness, independence and transparency.
- 2.6 The Accountancy Foundation consisted of four regulatory bodies: the Auditing Practices Board, the newly created Investigation and Disciplinary Board, an Ethics Standards Board and a new Review Board, now known as the Professional Oversight Board.

² Announced by Ian McCartney, former Minister of State for Competitiveness (May 1997-June 1999), in a speech to the ICAEW on 30 November 1998

- 2.7 On 24 July 2002, the then Secretary of State for Trade and Industry, Patricia Hewitt, announced a review of the regulatory arrangements for the accountancy and audit professions. The review report³ followed a wide-ranging public consultation and found no evidence that the existing regulatory system for the accountancy and audit professions was seriously flawed but concluded that there was scope to further strengthen its independence and to achieve a clearer, more authoritative and more transparent regulatory structure.
- 2.8 Its main conclusion was that the FRC should take on the functions of the Accountancy Foundation to create a unified and authoritative structure with three clear areas of responsibility: the setting of accounting and audit standards, their enforcement or monitoring, and the oversight of the major professional accountancy bodies. Thus in 2004 the AADB became an operating body of the FRC and on 13 May 2004 its Accountancy Scheme became operational.
- 2.9 The Accountancy Scheme succeeded the Accountants' Joint Disciplinary Scheme (JDS), whose participants are the ICAEW and ICAS. The JDS investigated the conduct of Members and Member Firms of the ICAEW and ICAS in cases of public concern.
- 2.10 Initially four members of the CCAB participated in the Accountancy Scheme – ACCA, CIMA, CIPFA and the ICAEW. In 2006 the ICAS and the ICAI also became Participants. Details of the cases currently under investigation by the AADB can be found on its website at www.frc.org.uk/aadb/present.

Board Composition

- 2.11 The Board is appointed by the Nomination Committee of the FRC in accordance with the Articles of Association of the Accountancy and Actuarial Discipline Board Limited. The Articles require the Board to have a lay majority and a lay Chairman. It currently has 8 members: 5 lay persons (including the Chairman) and 3 accountants. With the expansion in August 2007 to include the actuarial profession the Board will shortly add 2 actuarial members and 1 additional lay member, the latter to ensure the Board retains its lay majority.

The Scope of the AADB

- 2.12 The AADB is responsible for operating and administering its independent disciplinary scheme, the Accountancy Scheme, covering Members and Member Firms of the six member bodies of the CCAB, for:

³ Review of the Regulatory Regime of the Accountancy Profession, Report to the Secretary of State for Trade and Industry

- the investigation of cases, involving Members and/or Member Firms of the participating bodies, which raise or appear to raise serious issues affecting the public interest in the United Kingdom and Ireland; and
- bringing disciplinary proceedings against those whose conduct appears to fall short of the standard reasonably to be expected of a Member or Member Firm and, where appropriate, to impose sanctions.

2.13 A separate scheme (the Actuarial Scheme) covers Members of the Faculty of Actuaries and the Institute of Actuaries.

2.14 The focus of the AADB is on matters which raise or appear to raise important issues affecting the public interest in the UK and Ireland; other cases continue to be dealt with by the individual accountancy body of the Member concerned.

2.15 There are two channels for public interest cases to come to the AADB. The accountancy body concerned may refer a case to the Board. The AADB also has the power to take on cases that come to its attention in other ways.

Key Characteristics of the Accountancy Scheme

2.16 In creating the Accountancy Scheme, and in accordance with the views of Government, the AADB agreed with the profession that the regulatory system adopted for the investigative and disciplinary arrangements should include the following features:

- i. The arrangements should ensure that disciplinary matters which raise serious issues affecting the public interest are dealt with by a body independent of the accountancy bodies.
- ii. The conduct dealt with by the arrangements should be drawn as widely as possible so that all serious public interest issues are captured. As a minimum, external auditors and accountants involved in financial reporting and those involved in financial management should be covered.
- iii. The arrangements should also be capable of dealing with cases of public interest wherever they may arise – these could include therefore cases involving tax advice, brokering, and other services provided by professionals as well as the more traditional accounting and auditing services.
- iv. The arrangements should ensure that the process is transparent, with provision for public reporting on the decision to investigate and the outcome of investigations; and for the hearing of disciplinary cases in public.
- v. There should be a majority of lay members involved in the disciplinary process, both at Board level in deciding on whether a case meets the public interest criteria and in the membership of the disciplinary tribunals.

- vi. An appropriate separation of functions should be maintained between the Board, which decides to take on a case, the prosecutor (Executive Counsel) and the judges (disciplinary tribunal) of the case.
- vii. The standard of proof needed to support a finding in a disciplinary hearing should be the civil standard, i.e. the balance of probabilities.
- viii. Appeals against tribunal decisions should be allowed only on limited grounds, to ensure an efficient and expeditious process, whilst taking account of the rules of natural justice and compliance with the Human Rights Act.

2.17 The features described above are fully embedded in the Accountancy Scheme.

Funding Arrangements for the AADB

2.18 In line with the general principle supported by the Government that the cost of regulation should be borne by the profession or industry being regulated, the cost of operating and maintaining the Accountancy Scheme is funded mainly by the Participants.

2.19 The costs of operating the AADB Accountancy Scheme can be divided into two broad categories:

- i. Core costs are the general operating costs of the AADB, and include the remuneration of the Board, the Secretary to the Board, Executive Counsel and his staff, office and equipment costs, travel and other expenses; and
- ii. Case costs are the costs attributable to individual cases and include reference costs, investigation costs, disciplinary tribunal costs, prosecution costs, and appeal tribunal costs.

2.20 The AADB's core costs are funded from the FRC's core operating costs. Case costs of particular matters are funded by the relevant Participant or Participants. Details of the FRC's funding arrangements can be found in its publication, 'Regulatory Strategy: Our Role and Approach', November, 2007, available on the FRC website at <http://www.frc.org.uk/publications/pubs.cfm>.

Three The Current Accountancy Scheme

3.1 The main function of the Board is to decide whether a matter should be investigated. The Board can become seized of a matter relating to the conduct of a Member or Member Firm in one of two ways:

- i. a matter can be referred to the Board by one of the Participants; or
- ii. the Board can become aware of a matter in other ways, for example through press coverage.

3.2 Under the current Accountancy Scheme, the Board:

- decides whether a matter should be dealt with by the AADB;
- where required by the Accountancy Scheme, consults with the relevant Participant before beginning an investigation;
- sets the scope of investigations;
- gives notice of its decisions to the Participants;
- publishes its decisions to investigate unless it would not be in the public interest to do so;
- sets and reviews the budget for investigations;
- serves complaints and appoints tribunals and appeal tribunals to hear disciplinary complaints and appeals;
- appoints individuals to consider whether to give leave to appeal; and
- publishes the outcome of AADB investigations and the findings of tribunals and appeal tribunals in the manner it thinks fit.

3.3 The Board can begin an investigation into the conduct of a Member or Member Firm of one of the Participants if it considers that:

“the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and the matter needs to be investigated to determine whether there may have been an act of misconduct;”.

3.4 An investigation may also be instigated where it appears that a Member of Member Firm has failed to comply with its obligations under the Accountancy Scheme to cooperate with an investigation.

3.5 Once a decision to investigate has been taken, the matter is referred by the Board to the Executive Counsel (who is a senior lawyer appointed by the Nomination Committee of the FRC) who will conduct the investigation.

- 3.6 If, following the investigation, and after considering the written representations provided by the Members or Member Firms concerned, the Executive Counsel considers that there is evidence that a Member or Member Firm appears to have committed an act of misconduct, he must deliver a disciplinary complaint against the Member or Member Firm concerned to the Board, which must serve the complaint and appoint a disciplinary tribunal to hear the complaint in public. In making this decision the Executive Counsel operates independently of the Board.
- 3.7 The disciplinary tribunal sits in public but has the discretion to exclude the public from all or part of the hearing. It hears the disciplinary complaint and makes findings in respect of the evidence presented. If it reaches, on the balance of probabilities, an adverse finding against the Member or Member Firm, it can order sanctions against that Member or Member Firm. The sanctions available to the tribunal range from a reprimand, to a fine or exclusion from membership of the professional body in question. It can also order the Member or Member Firm to pay some or all of the costs of the investigation and disciplinary proceedings.
- 3.8 If a disciplinary complaint against a Member or Member Firm is dismissed by the tribunal, it has a discretion to order the AADB to pay to the Member or Member firm a sum in respect of the costs incurred defending the complaint.
- 3.9 The Accountancy Scheme makes provision for an appeals process. Leave to appeal against a decision of a disciplinary tribunal may be granted on limited grounds only. Notice of appeal must be given to the Board in the manner directed by the Accountancy Scheme and within a set time limit.
- 3.10 The Accountancy Scheme can be found on the AADB's website: <http://www.frc.org.uk/aadb/publications/>.

The Public Interest

- 3.11 The Board has issued guidelines to assist it in deciding whether a matter raises or appears to raise important issues affecting the public interest in the United Kingdom and Ireland. The guidelines set out the factors the Board will take into account in making a decision to investigate. These include whether there appears to be serious public concern or damage to public confidence in the accountancy profession in the UK and all the circumstances of the case, including its nature, extent, scale and gravity, for example the number of people adversely affected, or the sums of money involved or whether the matter concerns a body in which there is a public interest, such as a public utility. The Guidelines issued by the Board are attached at Annex B.

Four The Actuarial Profession

- 4.1 On 16 August 2007 the AADB expanded its responsibilities to include the actuarial profession. On 13 September 2007 the Board adopted a separate disciplinary scheme for the actuaries (the Actuarial Scheme).
- 4.2 Both the professional bodies for the actuarial profession in the UK participate in the Actuarial Scheme. They are the *Faculty of Actuaries (in Scotland)* and the *Institute of Actuaries*, known collectively as the Actuarial Profession. They operate joint disciplinary arrangements under separate schemes for actuarial cases that are not considered to be public interest matters.
- 4.3 The Board considers it desirable that the provisions of the Actuarial Scheme should mirror those of the Accountancy Scheme as far as possible. The Actuarial Scheme already incorporates some of the changes now proposed for the Accountancy Scheme, such as the use of an independent *Convener* to appoint the members of tribunals, and the inclusion of a power for Executive Counsel to conduct preliminary enquiries.
- 4.4 The AADB considers that any additional proposals adopted for the Accountancy Scheme should also be reflected in amendments to the Actuarial Scheme and proposals will be made to the Actuarial Profession in due course.

Five The Accountancy Scheme Review

- 5.1 The AADB is committed to better regulation which does not impose unnecessary burdens on the private sector but which supports its overall aim of promoting public confidence in the accountancy and actuarial professions by providing a demonstrably fair, independent and transparent system for the investigation and, where appropriate, discipline of accountants, auditors and actuaries in public interest cases, in line with Better Regulation Commission principles.
- 5.2 One of the Board's stated objectives is "keeping under review the working of the Schemes and supporting Regulations to ensure that they are operating effectively".
- 5.3 As stated in the introduction, after two years of operation of the Accountancy Scheme, the Board decided to undertake a formal review of the disciplinary arrangements. Following the conclusion of the first hearing of a formal complaint by a Disciplinary Tribunal under the Accountancy Scheme the Board extended the review to take into account the issues highlighted by the hearing.
- 5.4 The Board undertook its review of the Accountancy Scheme with the following aims and objectives:
- to ensure the continued provision of "a demonstrably fair, independent and expert system for investigating and, where appropriate, hearing significant public interest disciplinary cases" (AADB Aims and Objectives); and
 - to uphold the principles of fairness, transparency and proportionality, which are considered to be the hallmarks of effective, independent regulation.
- 5.5 Following its review of the Accountancy Scheme the Board decided to recommend a number of changes to the disciplinary arrangements. The changes proposed by the Board and the reasoning behind them are set out in detail in section six.
- 5.6 A provision in the Accountancy Scheme requires the agreement of the Participants and of the FRC to any changes.

Six Proposed Changes to the Accountancy Scheme

Paragraph references are to the draft amended Accountancy Scheme at Appendix A.

6.1 This section sets out the main amendments proposed for the Accountancy Scheme in detail and the reasons for the proposed changes. The review has also led to a number of minor and consequential amendments which are highlighted in the draft amended Accountancy Scheme at Appendix A.

“Misconduct” (paragraph 2(1))

6.2 The Accountancy Scheme provides that a disciplinary tribunal, having heard a formal complaint, may make an adverse finding against a Member or Member Firm if it finds that he or it has committed an “act of misconduct”. This is defined as *“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”*.

6.3 The Board considers that the definition contained in the Accountancy Scheme is unclear and may not be consistent with the courts’ interpretation of “misconduct”. Further, the definition is narrower than the descriptions of conduct which may render a Member or Member Firm liable to disciplinary action as set out in the various disciplinary schemes of the Participants. Since the AADB derives its powers from its Participants it is appropriate that the definition within the Accountancy Scheme should be more closely aligned to the schemes of the Participants.

6.4 The Board also considers that the current regulatory trend is away from a strict definition of “misconduct” and towards the concept of censuring behaviour which prejudicially affects the status or reputation of the profession. Some regulators have now abandoned the concept of “misconduct” and adopted, for example, concepts of impairment to practise or of conduct which falls short of the standards reasonably to be expected of the relevant professional. Examples of regulators who have adopted this approach can be found in the accountancy, health and other sectors.

6.5 It is therefore proposed to amend the definition of “misconduct” and to provide that a disciplinary tribunal shall decide whether the allegations contained in the formal complaint constitute “Relevant Conduct”. The proposed definition is set out in full below and is intended to promote clarity in relation to the types of behaviour which may render a Member or Member Firm liable to disciplinary action.

- 6.6 “Relevant Conduct ” will be defined as “an act or omission, or series of acts or omissions by a Member or Member Firm in the course of his or its professional, business or financial activities which:
- i. is likely to damage public confidence in the accountancy profession,
 - ii. is likely to bring discredit on himself or itself, the accountancy profession, or (in the case of an individual) his employer,
 - iii. fails to comply with any relevant law, charter, bye-law, regulation or guidance,
 - iv. fails to comply with applicable accounting, auditing, ethical or other standards, or
 - v. falls short of the standards of professional conduct, competence, or integrity reasonably to be expected of a Member or Member Firm.”

Question 1

- a) Do you agree in principle with the proposal to require a tribunal to find that any allegations proved amount to “Relevant Conduct” before making an adverse finding?
- b) Do you agree with the proposed definition of “Relevant Conduct”?

Preliminary Enquiries

(paragraph 5(10))

- 6.7 Before a decision is taken to investigate, the Board must be satisfied that a matter appears to raise important issues affecting the public interest in the United Kingdom, and, that an investigation is needed to decide if a Member or Member Firm has committed an “act of misconduct”. In deciding whether the public interest is affected the Board must consider whether the matter appears to give rise to serious public concern or whether it appears to damage public confidence in the accountancy profession.
- 6.8 A decision to investigate a Member or Member Firm will have significant consequences, not least for that Member or Member Firm. It is therefore important that this decision is as fully informed as possible. The Board is normally able to make a decision whether or not to investigate a matter on the basis of information from various sources. However, there may be circumstances where additional information, which could not be obtained without preliminary enquiries, is needed. The Accountancy Scheme does not give the Board any power to conduct preliminary enquiries.
- 6.9 To ensure that the Board always has sufficient information to decide whether to institute an investigation it is proposed to introduce a new power whereby the Board can ask Executive Counsel to make preliminary enquiries before it decides whether to begin an investigation. If

preliminary enquiries are instituted, the relevant Participant will be informed, and, in cases of referral by a Participant, the usual time period for consideration of a case will be extended accordingly. As an example, this power would allow Executive Counsel to make preliminary enquiries with Members or Member Firms who may hold information which would assist the Board in its decision about whether to investigate a matter.

Question 2

- a) **Do you agree with the proposal to provide for the Board, where it considers it relevant, to direct Executive Counsel to make preliminary enquiries before it reaches a decision on whether to investigate a matter?**

The Decision to Lay Formal Complaints

(paragraphs 6 & 7)

- 6.10 At present, the decision to deliver a formal complaint rests with Executive Counsel on completion of his investigation and having considered the representations of the Member or Member Firm. The Accountancy Scheme provides that Executive Counsel shall deliver the formal complaint to the Board, but there is no provision allowing the Board to challenge Executive Counsel's conclusions.
- 6.11 The Board considers that where Executive Counsel has investigated a matter, he may not appear to be properly independent when determining whether a formal complaint should be delivered.
- 6.12 The Board also considers that the fairness of the Accountancy Scheme would be further strengthened by an independent assessment of the formal complaint and the evidence in support of that complaint before a matter proceeds to a disciplinary tribunal.
- 6.13 Accordingly, it is proposed that the decision to deliver a formal complaint will be considered by a separate and independent committee, the *Disciplinary Decisions Committee (DDC)*. The *DDC* will comprise a senior lawyer, an accountant and a lay person. The committee members will be appointed by the Nomination Committee of the FRC. The *DDC* will be a standing committee but will meet only when there is a matter to consider.
- 6.14 The *DDC* will have three main functions:
- a) to review the formal complaint prepared by Executive Counsel together with supporting documents and representations from the Member or Member Firm and to determine whether the new evidential and desirability tests are satisfied (see paragraphs 6.22-6.27);
 - b) to review Executive Counsel's decision not to deliver a formal complaint following an investigation; and

c) to consider any request by Executive Counsel (where a formal complaint has been notified by the DDC to the Board but where the disciplinary tribunal has not met to hear the formal complaint) that the formal complaint be withdrawn and the case be closed.

6.15 In addition, the *DDC* will be able to re-consider matters if, having closed a case, it is satisfied at a later stage that the circumstances surrounding the case have changed so fundamentally since its original consideration of the matter that the matter ought to be revived; for example, if fresh evidence is brought to light.

6.16 The *DDC* will be required to apply the rules of natural justice at all times. Matters to be decided by the *DDC* will be decided by a majority of votes.

6.17 When reviewing a formal complaint prepared by Executive Counsel, the *DDC* will have three options in how it responds: it will be able to decide that both the evidential and desirability tests are met in relation to the entire formal complaint; or that both tests are met in relation to part only of the formal complaint; or that one or both tests are not met in relation to the formal complaint.

6.18 The *DDC* may request further information or representations, but it will not be able to amend or redraft formal complaints, other than to delete the part of a formal complaint which it decides does not meet both the evidential and desirability tests. Similarly, it will not be able to overrule either Executive Counsel's decision not to deliver a formal complaint (but in the event of disagreement may make a report to the Board) or his decision to request that a formal complaint be withdrawn and the case closed.

6.19 The *DDC* will be accountable to the Board, and will notify the Board of its decisions. The Board will publish the outcome of the *DDC's* decisions in the manner it deems appropriate unless it would not be in the public interest to do so.

Question 3

- a) **Do you agree with the proposal that an independent committee will review the formal complaint and the evidence in support of that complaint before the formal complaint is served and a disciplinary tribunal is appointed?**
- b) **What are your views on the proposed composition and the three main functions of the *DDC*?**

Reduction of Scope

(paragraph 6(6))

- 6.20 The Accountancy Scheme provides that the Board may, following a report from Executive Counsel and consultation with the relevant Participant, widen the scope of an investigation to include matters which are discovered during the investigation. However, there is no express power to reduce the scope of an investigation.
- 6.21 To assist in the fair and efficient operation of the Scheme, it is proposed to make express provision for the scope of an investigation to be reduced by the Board on request by Executive Counsel. The reduction in the scope of the investigation should not result in any increased costs and accordingly, it is not proposed that there should be any requirement to consult with the relevant Participant before considering such a request and making a decision. However, the Participant will be informed of the decision once it has been made.

Question 4

- a) Do you agree with the proposal to provide for the Board to reduce the scope of an investigation on request by Executive Counsel?**

The Test for delivering a Formal Complaint

(paragraphs 6(9) & 7(9))

- 6.22 The Accountancy Scheme provides that following his investigation, Executive Counsel shall deliver a formal complaint if he considers that a Member or Member Firm "*appears to have committed an act of misconduct*".
- 6.23 The Board considers that this may be a difficult and unclear test to apply and that a more straightforward test, similar to the test operated by other bodies, including the Crown Prosecution Service, should be introduced.
- 6.24 It is proposed that Executive Counsel should consider whether "*there is a realistic prospect that a Tribunal will find that the conduct of a Member or Member Firm constitutes Relevant Conduct*" in deciding whether to deliver a formal complaint to the DDC.
- 6.25 The Board also notes Schedule 10 of the Companies Act 2006 (and previously Schedule 11 of the Companies Act 1989) which requires accountancy bodies with 'Recognised Supervisory Body' status to participate in appropriate and funded disciplinary arrangements which include the investigation of public interest cases arising in connection with the performance of company audit functions and for the holding of disciplinary hearings "*which appear to be desirable following the conclusion of such investigations*".

6.26 In order to align the provisions of the Accountancy Scheme with the requirements of the Companies Act, it is proposed that, in addition to considering the test applied by Executive Counsel, the DDC should consider the desirability of proceeding to a hearing. Accordingly, the DDC will be required to determine whether:

- a) *“there is a realistic prospect that a Tribunal will find that the conduct of Member or Member Firm constitutes Relevant Conduct”* and
- b) *“with regard to the Desirability Criteria, a hearing is desirable”*.

6.27 Desirability Criteria will be issued as guidance by the Board on the basis of safeguarding the public interest and maintaining public confidence in the standards of conduct of Members and Member Firms. The guidelines are likely to include considerations such as a Member’s health; the seriousness of the allegations; and whether a Member may be subject to proceedings for “Relevant Conduct” by other authorities and bodies outside the UK.

Question 5

- a) **Do you agree with the proposed test to be applied by Executive Counsel in deciding whether to deliver a formal complaint?**
- b) **Do you agree with the proposed two-fold test to be applied by the DDC?**
- c) **What are your views on the factors to be included in the Desirability Criteria?**

Appointment of Tribunals

(paragraphs 8(2) & 9(4))

6.28 The Accountancy Scheme provides that, following the delivery of a formal complaint by Executive Counsel, the Board will appoint a disciplinary tribunal. Further, in the event that leave to appeal is given, the Board will appoint an appeal tribunal.

6.29 The Board has a variety of other functions under the Accountancy Scheme, including deciding whether there should be an investigation of a particular matter and deciding whether to accept a formal reference from a Participant. The Board also sets the budget for investigations and receives information regarding the progress of investigations for the purposes of budgetary monitoring.

6.30 The Board considers that it will further support the fairness and independence of the Accountancy Scheme if the appointment of tribunal and appeal tribunal members is carried out by a person independent and separate from the Board.

6.31 It is therefore proposed that an independent individual, known as a *Convener*, will appoint disciplinary and appeal tribunals and the senior lawyer who will consider a notice of appeal to decide whether or not to give leave to appeal. The *Convener* will be appointed by the Nomination Committee of the FRC.

Question 6

a) **Do you agree with the proposal that an independent Convener will appoint tribunals?**

Award of costs

(paragraph 8(9))

- 6.32 The Board accepts that the question as to whether costs should be awarded against a regulator bringing disciplinary proceedings in the public interest is difficult. A balance must be maintained between fairness to a respondent and ensuring that the regulator is not constrained from bringing proceedings because of the possibility that costs may be awarded against it. The Accountancy Scheme provides that in the event that a formal complaint is dismissed, a tribunal may order that the legal costs of the respondent be paid by the Board: the tribunal's discretion in this regard is unfettered. In the *Mayflower* case a substantial costs award was made against the Board which had to be met from the FRC's income. Neither the Board nor the FRC has reserves available to meet costs awards of this kind.
- 6.33 The possibility of adverse cost awards in unrestricted circumstances can inhibit the ability of a regulator acting in the public interest to bring disciplinary proceedings which should be brought. The result will be that, in some instances, matters which should receive a public airing may not be heard and individuals and firms who otherwise would be the subject of disciplinary proceedings may not be pursued. In the case of the AADB, this would undermine its objective of supporting public confidence in the accountancy and audit professions in the UK and Ireland.
- 6.34 The law in this area is developing. The Board was guided by the recent decision in *Paul Baxendale-Walker v Law Society [2007]*⁴ but notes that the courts may be asked to consider this issue again. The Court of Appeal held in that case that the exercise of a regulatory function places a regulator in an entirely different position to that of the parties in civil litigation and that in these circumstances the principles applicable to an award of costs are different to those applicable to private civil litigation. In the light of this ruling, the normal presumption that costs should follow the event (i.e. be awarded to the successful party) does not apply in relation to cases brought by a public interest regulator.

⁴ EWCA Civ 233

- 6.35 The Board notes that a number of schemes make no provision for the recovery of costs by either party at the conclusion of a case, for example the General Medical Council and the General Teaching Council for England.
- 6.36 Other regulatory regimes make provision for a respondent to recover costs on limited grounds only. For example, the Financial Services and Markets Tribunal, which determines decisions of the Financial Services Authority (FSA) which are referred to it, may order that a party must pay another's costs only where it considers that party to have acted "*vexatiously, frivolously or unreasonably*", or the Tribunal may order that the FSA pay all or part of another party's costs where it considers a decision of the FSA was "*unreasonable*"⁵.
- 6.37 The Board considers that it will not be able to carry out its function efficiently and effectively if it continues to be potentially liable for unlimited costs if complaints which are properly brought by Executive Counsel are found by a tribunal not to have been proved. At the same time, the Board is concerned not to compromise fairness to respondents. The Board is nevertheless satisfied that it is appropriate to limit the tribunal's discretion particularly in view of the existing provision for assistance for respondents: a tribunal may, following an application by a respondent, require the AADB to meet the reasonable costs of his defence if he can demonstrate that he cannot afford to pay for legal representation and that he could not be expected to conduct his own defence. This provision is included in the Accountancy Scheme to protect respondents and to ensure that no respondent is prejudiced by virtue of his inability to afford appropriate representation.
- 6.38 It is therefore proposed that the tribunal's discretion to award costs in favour of a respondent and against the Board should be limited to circumstances where there has been "*misfeasance*" on the part of the Executive Counsel, the *DDC* or any person engaged to assist with the investigation or disciplinary proceedings. The essential elements of "*misfeasance*" are: the exercise of a power intending to cause harm, and/or acting in the knowledge of (or with reckless indifference to) the illegality of an act whilst knowing (or with reckless indifference to) the probability of causing harm.
- 6.39 The Board considers that this limitation of the circumstances in which a tribunal may award costs in favour of a successful respondent strikes the appropriate balance between allowing the regulator to undertake its work and ensuring fairness to Members and Member Firms.

Question 7

- a) **Do you agree that a balance must be maintained between fairness to a successful respondent and ensuring that the regulator is not constrained from bringing proceedings because of the possibility that costs may be awarded against it?**

⁵ Financial Services and Markets Act 2000 Schedule 13 Paragraph 13

- b) Do you agree that the proposal in respect of costs assists in maintaining that balance?**

Tribunal Chairman's Casting Vote

(paragraph 10(8))

- 6.40 The Accountancy Scheme provides that any matter to be decided by a tribunal shall be decided by a majority of votes and in the case of an equality of votes, the chairman shall have a second or casting vote.
- 6.41 The Board notes that given the requirements laid out in the Accountancy Scheme in relation to the constitution of a tribunal, it is unlikely that it will ever be necessary to invoke the second vote provision. However, its continued inclusion in the Accountancy Scheme could lead to a decision being unfairly influenced by one individual. Other disciplinary schemes require that any application from either party to a tribunal should be agreed by a majority of the tribunal members for it to be successful. This has the advantage of applying equally to all parties appearing before a tribunal.
- 6.42 The Board proposes that any matter to be decided by a tribunal shall be decided by a majority of votes and in the case of an equality of votes in respect of any motion, that motion will not be carried.

Question 8

- a) Do you agree with the proposal to remove the tribunal chairman's casting vote?**
- b) Do you agree with the proposal that, where there is an equality of votes in respect of any motion, that the motion should not be carried?**

Referrals from the Joint Disciplinary Scheme (JDS)

(paragraph 18)

- 6.43 The Accountancy Scheme allows for the transfer of any matters previously referred to the JDS. The ICAEW and the ICAS participate in the JDS, referring public interest cases to that scheme. No cases have been referred to the JDS since the Accountancy Scheme came into effect in 2004 and the ongoing cases which had previously been referred to it are in the process of being concluded. No JDS cases have been transferred to the AADB and it is not anticipated that it will be necessary to make use of this provision.
- 6.44 The Board proposes that the power is removed from the Accountancy Scheme.

7 Preliminary Regulatory Impact Assessment

- 7.1 This section sets out the Board's assessment of the perceived benefits and the extent of the additional costs that may be incurred as a result of implementing the proposals to amend the Accountancy Scheme, as set out in this paper.
- 7.2 The focus of this preliminary regulatory impact assessment (RIA) is purely on the costs and benefits which the Board anticipates will arise as a result of the changes it is proposing to the Accountancy Scheme and not on the overall costs and benefits of the Accountancy Scheme per se or its underlying principles.
- 7.3 The FRC approach to preparing regulatory impact assessments can be found on its website and has been followed.

Risk Assessment

- 7.4 The purpose of the Board's proposals is to ensure the continued provision of "a demonstrably fair, independent and expert system for investigating and, where appropriate, hearing significant public interest disciplinary cases" (AADB Aims and Objectives) and to uphold the principles of fairness, transparency and proportionality, which are considered to be the hallmarks of effective, independent regulation.
- 7.5 The FRC's Strategic Framework recognises that one of the outcomes which contribute to its overall aim of confidence in corporate reporting and governance is that accountants can be relied upon to act with integrity and competence, having regard to the public interest. Effective arrangements in relation to public interest cases contribute to that outcome and the overall aim.
- 7.6 The AADB deals with events of low probability but which, when they do occur, have a profound impact on those involved. They also have the potential to cause serious public concern and to undermine public confidence in the accountancy profession in the UK and Ireland.

Who will be Affected by the Proposed Changes

- 7.7 There is a significant public interest in ensuring that an effective and independent system is in place to deal with misconduct on the part of accountants and auditors in public interest cases. The Board believes that its proposals will reinforce the existing arrangements and further strengthen the ability of the AADB to deal with these cases effectively and will therefore protect the public interest.

7.8 The direct impact of the changes proposed by the Board will, however, fall on the Participants, their Members and Member Firms and individuals and firms involved in an investigation or disciplinary hearing in one capacity or another.

Costs and Benefits of the Proposed Changes

7.9 The Board believes that the proposed changes to the Accountancy Scheme will deliver benefits to the Participants and their Members and Member Firms, to the AADB and FRC and to the public, in terms of further strengthening the fairness already built into the Accountancy Scheme. The Board further believes that the proposed changes will support the robustness of the procedures prescribed by the Accountancy Scheme, and thereby protect the reputation, effectiveness of and confidence in the disciplinary arrangements.

7.10 It is difficult to quantify accurately the financial costs that may be involved in individual cases. The AADB has so far concluded one case and has limited data upon which to draw.

7.11 The Board believes that a number of the changes it is proposing will have no discernible effect on the overall cost of an investigation or disciplinary hearing, either in terms of time or in financial terms.

7.12 The Board also believes that the proposed changes may result in cost and time savings in some instances. However, it is not feasible to attempt to quantify these potential savings. For example, the added clarity which the Board believes will be provided by the proposed definition of 'Relevant Conduct' may result in costs savings during the investigation and the tribunal hearing. A power to conduct preliminary enquiries may also ultimately result in cost savings.

7.13 Additional costs will arise as a result of the Board's proposals in the following areas: the decision to lay formal complaints, the test for delivering a formal complaint, the appointment of tribunals and the award of costs. The single most significant additional source of cost will be the proposed *Disciplinary Decisions Committee*.

Preliminary Enquiries

7.14 Where the Board directs Executive Counsel to conduct preliminary enquiries before making a decision about whether to investigate a matter, some costs will result. These are likely to be small in comparison with the cost of a full investigation and must be balanced against the benefit to the Board of having more information upon which to base its decision about whether to investigate a matter.

- 7.15 If a full investigation follows, the information gathered as a result of the preliminary enquiries is likely to be relevant to the investigation and would in any event have been sought at that stage. In these circumstances the cost of conducting preliminary enquiries is unlikely to be additional.
- 7.16 If the Board decides, on the basis of the information gathered as a result of preliminary enquiries, that a full investigation is not warranted, it could be argued that in some cases there may be cost savings as a full investigation, which might otherwise have been begun, will be averted. In these circumstances the benefits to those who might have been identified as subjects in an investigation will not be purely financial. Other individuals or firms involved in the case in one capacity or another will also be spared the cost of complying with a full investigation.

The Decision to Lay Formal Complaints

- 7.17 The Board believes that the *DDC* will be the single largest additional cost to result from its proposals. However, the costs of the *DDC* must be balanced against the benefit of the added independence and fairness which will be introduced into the decision to serve a formal complaint and convene a disciplinary tribunal.
- 7.18 Again it is difficult to arrive at an accurate estimate of the costs that might be involved. Whilst it is proposed that the *DDC* should be a standing committee, it will convene and be remunerated only when there is a case to consider. The Board proposes that the members of the *DDC* should be remunerated in accordance with the same policy and rates set for members of AADB tribunals, currently £400 per day and £750 per day for the legally qualified Chair.
- 7.19 The *DDC* will incur additional costs. The precise amount of this cost will depend on the individual case. The three members of the *DDC* will be expected to work together to reach a collective decision about whether or not to endorse the recommendation of Executive Counsel about referring a complaint forward to a disciplinary hearing. However, the *DDC* will only be considering the case on paper and will not, unlike a tribunal, sit and hear oral submissions or witness evidence. Further, their function is to decide whether the two stage test (evidential and desirability tests) for a prosecution is met. They do not have to decide whether a case is proved on the balance of probabilities.
- 7.20 The Board has very little data with which to predict with accuracy what that cost is likely to be for any given case. At best it can make a number of assumptions in order to arrive at a loose estimate of what the costs might amount to. By way of example, for a reasonably complex case, it might take the *DDC* 5-10 days to consider the papers and reach a decision. At a combined cost of £1550 per day (£750 for the Chair and £400 each for the accountancy and lay members) that could amount to between roughly £7,750 to £15,500 per case plus a nominal amount for the cost of writing up the decision, a task which would fall primarily to the Chair. For a small or less complex case the costs would be considerably less. Whereas, for a large and very complex case

the costs would be higher. The wide range in potential additional costs is a reflection of the significant differences in the size and complexity of individual cases.

- 7.21 In arriving at these loosely predicted ranges, the Board has assumed that the amount of time which the *DDC* will spend on a case will be significantly less than that required by a tribunal which must hear oral submissions and witness evidence, including cross examination of witnesses, decide which facts are proved on the balance of probabilities, draft detailed findings, hand down sanctions and possibly hear an application for costs.
- 7.22 It is normal practice for Executive Counsel to seek separate advice from external Counsel about the strength of a case, prior to laying a complaint. The current costs of obtaining such advice vary greatly depending on the size and complexity of the case involved, but in most cases fall in the range of £15,000 to £50,000 per case.
- 7.23 The costs of Executive Counsel obtaining separate advice from external Counsel will continue to be incurred. The costs of this advice may increase slightly as a result of the changes proposed as Counsel is likely to be involved in the additional task of preparing the case to go to the *DDC*. There may also be a small increase in other costs, for example administrative costs and the costs of engaging an expert witness, as a result of the additional step in the process.
- 7.24 Similarly, there may be some additional costs involved for the respondent as a result of introducing the *DDC* into the process. These might be administrative and legal costs resulting from the need to prepare written representations to go to the *DDC*.
- 7.25 The Board notes that the Accountancy Scheme includes provision for a tribunal to order a Member or Member Firm against whom it makes an adverse finding to pay the whole or part of the costs of the investigation and the hearing of the formal complaint before the disciplinary tribunal. Under the terms of an agreement with the Participants, case costs recovered in this manner are automatically returned to them and are not retained by the AADB. In view of this provision, in cases where the tribunal makes an adverse finding, the costs of the *DDC* will in many instances fall on the Members and Member Firms who were parties to the case.

The Test for Delivering a Formal Complaint

- 7.26 The change to the evidential test for delivering a complaint should not have any cost implications. However, the introduction of a second stage to the test to be considered by the *DDC* (the desirability test) will bring an additional step to the process and add some time and hence cost, although the Board expects this to be minimal in relation to the overall task.

Appointment of Tribunals

7.27 The Board anticipates that there will be a small cost involved in appointing and retaining the *Convener*. The sporadic nature of the duties which the *Convener* will be required to perform mean that the sum required to retain the *Convener* should not be large, possibly between £2000 and £5000 per annum, depending on the expected workload. In normal circumstances the AADB should be able to anticipate with a fair degree of accuracy how many cases the *Convener* might be needed for in any given 12 month period.

Award of Costs

7.28 The Board believes that the proposed change to the provision regarding cost awards in favour of respondents will have cost implications and that these will fall on the individuals and firms who successfully defend a formal complaint against them, and who will in future have to demonstrate “misfeasance” in order to recover their costs. The Board expects cases of “misfeasance” to be the exception. In the normal course of events, a successful respondent will not be able to recover their costs under the Accountancy Scheme.

7.29 The Board considers it appropriate that unless there has been “misfeasance”, the costs should be borne by the parties involved in the case rather than by those who fund the FRC (the accountancy profession in general, large users of accountancy services and the taxpayer), who will benefit from the additional safeguard against large and unpredictable cost awards which the proposed change will provide.

7.30 The Board takes into consideration that the Accountancy Scheme includes a provision for a Member to apply to a tribunal for the reasonable costs of his legal representation to be met by the AADB.

Funding the Costs of the Board’s Proposals

7.31 With the exception of the cost of conducting preliminary enquiries and of selecting and remunerating a *Convener* to appoint members of tribunals, the Board takes the view that the additional costs as a result of implementing its proposals to amend the Accountancy Scheme will arise as a result of investigations and should therefore be attributed to individual cases. These would therefore be paid by the relevant Participants in accordance with the funding arrangements which are already in place between the AADB and the Participants.

7.32 In relation to the *Convener*, the Board takes the view that the costs of retaining and remunerating the *Convener* should be funded as core costs by the FRC from the general financial support it receives for the AADB from its combined funding sources.

7.33 The Board believes that there will not be any compliance costs associated with the changes it proposes for the Accountancy Scheme, save for those firms and individuals involved in cases where the Board decides to ask Executive Counsel to conduct preliminary enquiries and for firms and individuals who are required to comply with requests made by the *DCC* for information or representations.

Effect on Small Businesses

7.34 The Board does not consider that its proposals will have any significant adverse impact on small accountancy firms and small businesses in general.

7.35 It is possible that, where a small business is in some way involved in a case under investigation, there could be an isolated impact on that particular small business, but that would depend on the nature of the firm's involvement in the case.

Actuarial Scheme

7.36 Were the same amendments to be extended to the Actuarial Scheme, the additional costs would be roughly similar to those for the Accountancy Scheme, with the exception of the *Convener* and preliminary enquiries, which are already features of the Actuarial Scheme.

Conclusion

7.37 This preliminary regulatory impact assessment will be developed further in the light of responses to the consultation and a final assessment will be published with the Board's response.

Question 9

- a) **Do you have any comments on the costs and benefits (including any quantification) of the proposals to amend the Accountancy Scheme, as set out in the Board's preliminary Regulatory Impact Assessment?**

8 Invitation to Comment

How to respond

Please send your response by **11 April 2008** to:

Anna Colban
Secretary to the AADB
Financial Reporting Council
5th Floor, Aldwych House
71-91 Aldwych
London WC2B 4HN

Tel: 020 7492 2451

Fax: 020 7492 2459

Email: a.colban@frc-aadb.org.uk

This consultation paper is available online at <http://www.frc.org.uk/aadb/publications>.

Publication of response

The Board will publish a response to this consultation later in 2008.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or may be disclosed to the Participants. If you want the information that you provide to be treated as confidential or you do not wish your response to be published, please make this clear in your response. If you send an e-mail response which includes an automatically generated notice stating that the content is to be treated as confidential you should make it clear in the body of your message whether or not you wish your comments to be treated as confidential.

Questions

Any questions about the issues raised in this consultation document should be directed to **Anna Colban, Secretary to the Board**, at the above email address.

About you

Please use this section to tell us about yourself

Full Name:	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of public etc.):	
Date:	
Organisation / Company Name (if applicable):	
Address:	
Postcode:	
Email Address:	
Please indicate if you would like us to acknowledge receipt of your response (acknowledgments will be by email unless requested otherwise):	Yes / No

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations you represent.

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Annex A

Summary of the Main Changes Proposed to the Accountancy Scheme

The main changes proposed by the Board are as follows:

(paragraph references are to the draft amended scheme at Appendix A)

1. a change to the definition of conduct rendering a Member or Member Firm liable to disciplinary proceedings and the replacement of “misconduct” with the term “Relevant Conduct” (*paragraph 2(1)*);
2. a new power to conduct preliminary enquiries before making a decision to investigate (*paragraph 5(10)*);
3. changes to the procedures relating to the decision to lay complaints, including the formation of a *Disciplinary Decisions Committee (DDC)* (*paragraphs 6 & 7*);
4. a new power for the Board to reduce the scope of an investigation (*paragraph 6(6)*);
5. new tests to be applied by Executive Counsel before delivering a formal complaint (*paragraph 6(9)*); and by the *DDC* before a matter proceeds to a disciplinary tribunal (*paragraph 7(9)*);
6. new procedures to appoint tribunal (*paragraph 8(2)*) or appeal tribunal (*paragraph 9(4)*) members by an independent *Convener*;
7. restriction of the tribunal’s discretion to award costs against the Board to circumstances where there has been “misfeasance” on the part of Executive Counsel, the *DDC* or any person engaged to assist with the investigation or tribunal (*paragraph 8(9)*);
8. removal of the tribunal chairman’s casting vote (*paragraph 10(8)*); and
9. removal of the power relating to transfer of cases from the Joint Disciplinary Scheme (*paragraph 18*).

Summary of Questions

This document seeks responses to the following questions:

Question 1

- a) Do you agree in principle with the proposal to require a tribunal to find that any allegations proved amount to “Relevant Conduct” before making an adverse finding?
- b) Do you agree with the proposed definition of “Relevant Conduct”?

Question 2

- a) Do you agree with the proposal to provide for the Board, where it considers it relevant, to direct Executive Counsel to make preliminary enquiries before it reaches a decision on whether to investigate a matter?

Question 3

- a) Do you agree with the proposal that an independent committee will review the formal complaint and the evidence in support of that complaint before the formal complaint is served and a disciplinary tribunal is appointed?
- b) What are your views on the proposed composition and the three main functions of the DDC?

Question 4

- a) Do you agree with the proposal to provide for the Board to reduce the scope of an investigation on request by Executive Counsel?

Question 5

- a) Do you agree with the proposed test to be applied by Executive Counsel in deciding whether to deliver a formal complaint?
- b) Do you agree with the proposed two-fold test to be applied by the DDC?
- c) What are your views on the factors to be included in the Desirability Criteria?

Question 6

- a) Do you agree with the proposal that an independent *Convener* will appoint tribunals?

Question 7

- a) **Do you agree that a balance must be maintained between fairness to a successful respondent and ensuring that the regulator is not constrained from bringing proceedings because of the possibility that costs may be awarded against it?**
- b) **Do you agree that the proposal in respect of costs assists in maintaining that balance?**

Question 8

- a) **Do you agree with the proposal to remove the tribunal chairman's casting vote?**
- b) **Do you agree with the proposal that, where there is an equality of votes in respect of any motion, that the motion should not be carried?**

Question 9

- a) **Do you have any comments on the costs and benefits (including any quantification) of the proposals to amend the Accountancy Scheme, as set out in the Board's preliminary Regulatory Impact Assessment?**

Annex B

What Cases will be Dealt with by the AADB?

Guidelines for referral to/call-in of cases by the AADB

The Accountancy and Actuarial Discipline Board (“AADB”) provides a scheme for investigating and hearing allegations of misconduct by accountants or accountancy firms who are Members of one of the Participant professional bodies in the course of their professional, business or financial activities

The AADB deals only with cases where it considers that the matter raises or appears to raise important issues affecting the public interest in the United Kingdom. All other cases are dealt with by the Participant body to which the accountant or firm belongs.

In deciding whether a matter raises important issues affecting the public interest in the United Kingdom, the AADB considers:

- whether there appears to be:
 - serious public concern; or
 - damage to public confidence in the accountancy profession in the United Kingdom; and
- all the circumstances of the case, including its:
 - nature;
 - extent;
 - scale; and
 - gravity.

In considering the extent, scale and gravity of the case, factors the AADB is likely to take into account will include whether the alleged misconduct:

- adversely affected a significant number of people in the United Kingdom (such as investors, customers, employees, pensioners or creditors);
- involved or caused the loss of significant sums of money (typically, more than £1 million); or
- could undermine confidence in financial reporting or corporate governance in the United Kingdom.

These factors may be more likely to occur where the alleged misconduct concerns a body in which there is a public interest, such as:

- a United Kingdom publicly traded company;
- a significant financial institution, insurance undertaking or pension fund in the United Kingdom;
- a United Kingdom public body;

- a significant United Kingdom charity;
- a provider of energy, water, telecommunications or other utilities to a significant number of customers in the United Kingdom.

It should be emphasised that the above list is not exhaustive. Other factors may be considered in deciding whether a matter should be investigated by the AADB. Nor is any one factor or combination of factors necessarily determinative (although it might be). Each case will be considered in the light of all the relevant circumstances.

July 2005

Annex C

Membership of the AADB

Mike Fogden CB (Chair)	Formerly Deputy Chairman Civil Service Appeal Board, formerly Chairman, National Blood Authority
Sarah Brown OBE	Member Bar Standards Board, Non-executive Director, Revenue and Customs Prosecutions Office, formerly Department of Trade and Industry
Chris Lainé	Formerly President of the ICAEW, formerly Chairman Allied Textile Companies plc
Elizabeth Llewellyn-Smith CB	Formerly Department of Trade and Industry and Office of Fair Trading, then Principal of St Hilda's College, Oxford
Stuart McKee	Corporate Finance Partner, PricewaterhouseCoopers LLP
James Miller	Formerly Head of Audit, KPMG Scotland, Member of the ICAS
Laurence Shurman	Formerly Managing Partner, Kingsley Napley, formerly Banking Ombudsman
David Thomas	Corporate Director and Principal Ombudsman of the Financial Ombudsman Service

The Board is in the process of appointing two actuaries and a further lay person.

Annex D

List of consultees

Copies of this consultation paper are being sent to:

Administrative Justice & Tribunals Council
Association of British Insurers
Association of Chartered Certified Accountants
Actuarial Profession
Bar Council
Chartered Accountants Regulatory Board in Ireland
Chartered Institute of Management Accountants
Chartered Institute of Public Finance and Accountancy
Confederation of British Industry
Consultative Committee of Accountancy Bodies
Department for Business, Enterprise and Regulatory Reform
Department for Work and Pensions
Financial Services Authority
Her Majesty's Treasury
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Institute of Directors
Law Society
National Association of Pension Funds
National Consumer Council
Serious Fraud Office
The Pensions Regulator

The Accountancy & Actuarial Discipline Board Limited: registered number 5081857
The above company is a company limited by guarantee and registered in England; their registered office is 5th Floor Aldwych House, 71-91 Aldwych, London WC2B 4HN.

Appendix A

**The
Accountancy
and Actuarial
Discipline Board**

**The Accountancy Scheme adopted
on [13 May 2004] and amended on
[13 September 2007]**

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ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

ACCOUNTANCY SCHEME

Scheme

- 1(1) This ~~is the~~ Scheme ~~is made and adopted by the managing board of The AIDB Accountancy Investigation and Discipline Board Limited, now~~ the AADB (~~the "Board"~~) for the accountancy profession adopted with the agreement in writing of The Financial Reporting Council, with effect on and from the Effective Date.
- 1(2) To safeguard the public interest by maintaining and enhancing the standards of conduct of Members and of Member Firms, this Scheme provides a system for:-
- (i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities ~~(including as a partner, member, director or employee in or of any organisation or as an individual)~~, including such conduct before they became Members and Member Firms, and
 - (ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.
- 1(3) This Scheme applies to any matter referred to the AADB under sub-paragraph ~~65~~(2), or assumed by the AADB under paragraph ~~65~~(8) and to all steps and proceedings arising, directly or indirectly, there from or in consequence thereof or in relation thereto.
- 1(4) Every Member and every Member Firm shall have the obligations in relation to this Scheme set out in sub-paragraphs 13(1) and 13(2).

1(5) This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Interpretation

2(1) In this Scheme, unless inconsistent with the subject or context:-

~~*act of misconduct* means 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.~~

adverse finding means a finding by a Disciplinary Tribunal that a Member's or Member Firm's conduct has committed an act of misconduct constitutes Relevant Conduct or a Member or Member Firm has failed to comply with any of his or its obligations under sub-paragraphs 13(1) or 13(2).

AADB means The Accountancy and Actuarial Discipline Board Limited (formerly The Accountancy Investigation and Discipline Board Limited), a company limited by guarantee incorporated in England and Wales, number 5081857.

AADB Participant means a Participant who is participating in this Scheme.

Alternate Executive Counsel means a legally qualified person, appointed to that office by the Nominations Committee of The Financial Reporting Council.

Appeal Tribunal means a tribunal appointed by the ~~Board Convener~~ under sub-paragraph 9(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under sub-paragraph 9(1).

the Board means the board of the AADB appointed in accordance with Article 33 of the Articles of Association of the AADB.

~~**conduct** includes efficiency and competence, and includes a failure to act as well as a positive act.~~

~~**Convener** means an individual of suitable qualification and experience, appointed to that office by the Nomination Committee of The Financial Reporting Council, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of persons under sub-paragraphs 8(2) or 9(4).~~

~~**Desirability Criteria** means the criteria set by the Board from time to time to be taken into account by the Disciplinary Decisions Committee in determining whether a matter should, under this Scheme, be heard by a Disciplinary Tribunal.~~

~~**Disciplinary Decisions Committee** means the Committee appointed by the Nomination Committee of The Financial Reporting Council in accordance with the provisions of sub-paragraph 7(1).~~

~~**Disciplinary Tribunal** means a tribunal appointed by the ~~Board~~ Convener under sub-paragraph 8(~~1~~2).~~

~~**Effective Date** for a Participant, its Members and/or Member Firms, means the earliest date by which both of the following events have occurred:-~~

~~(i) _____ for Members and Member Firms of the ICAEW: [insert date]~~

~~(ii) _____ for Members and Member Firms of CIMA: [insert date]~~

~~(iii) _____ for Members and Member Firms of ACCA: [insert date]~~

~~(iv) _____ for Members and Member Firms of CIPFA: [insert date]~~

~~(v) _____ for Members and Member Firms of the ICAI: [insert date]~~

~~(vi) _____ for Members and Member Firms of ICAS: [insert date]~~

~~(i) _____ the adoption of the Scheme by the AADB~~

~~(ii) — the acceptance or approval of the Scheme in writing by or on behalf of the governing body of that Participant.~~

employ includes engage the services of, and *employee* shall be construed accordingly.

Executive Counsel:-

- (i) means a legally qualified officer of the AADB, appointed to that office by the Nomination Committee of The Financial Reporting Council; and
- (ii) in relation to any matter where that officer is unable or unwilling to act, because of volume of work, actual or possible conflict of interest or any other reason whatsoever, includes the Alternate Executive Counsel or, where there is more than one Alternate Executive Counsel, the Alternate Executive Counsel designated in relation to any matter by the Board and references in this Scheme to the Executive Counsel shall be interpreted as referring to the Alternate Executive Counsel in those circumstances.

Firm means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

Formal Ceomplaint means, ~~subject to sub-paragraph 7(11),~~ the formal document prepared by the Executive Counsel and submitted to ~~a Disciplinary Tribunal~~the Disciplinary Decisions Committee setting out the grounds (including particulars sufficient to enable such grounds to be properly understood by the Disciplinary Decisions Committee ~~a Disciplinary Tribunal~~ and the Members or Member Firms concerned) to support any allegation by the Executive Counsel that the conduct of a Member or Member Firm has committed an act of misconduct constitutes Relevant Conduct.

Former Member means a person who was a Member at the time of the alleged ~~misconduct~~Relevant Conduct but has ceased to be a Member.

Former Member Firm means a firm which was a Member Firm at the time of the alleged ~~misconduct~~Relevant Conduct but has ceased to be a Member Firm.

~~*JDS* means the Joint Disciplinary Scheme established by some of the Participants and which became effective on 21 January 1993 with the objective of promoting the highest possible standards of professional and business conduct, efficiency and competence.~~

Member means:-

- (i) a member of one or more of the AADB Participants, or
- (ii) ~~other than in sub-paragraph 10(2)(v),~~ any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AADB Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where sub-paragraph 4(6) applies, a Former Member

Member Firm means:-

- (i) a Firm which is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the AADB Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or two or more Members working together under a formal agreement, or
- (i) Where sub-paragraph 4(6) applies, a Former Member firm.

Panel means the panel appointed pursuant to sub-paragraph 10(1).

Participant means a member of the Consultative Committee of Accountancy Bodies and any other relevant accountancy body with the extension that, if an accountancy body ceases to be a Participant or an AADB Participant at a time when any investigation or proceedings under this Scheme are proceeding, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of

a Tribunal), that body shall be regarded and treated as if it remained an AADB Participant.

Regulations means regulations made by the Board from time to time, ~~as may be amended from time to time.~~

Relevant Conduct means an act or omission, or series of acts or omissions, by a Member or Member Firm in the course of his or its professional, business or financial activities which:-

- (i) is likely to damage public confidence in the accountancy profession,
- (ii) is likely to bring discredit on himself or itself, the accountancy profession, or (in the case of an individual) his employer,
- (iii) fails to comply with any relevant law, charter, bye-law, regulation or guidance,
- (iv) fails to comply with applicable accounting, auditing, ethical or other standards, or
- (v) falls short of the standards of professional conduct, competence, or integrity reasonably to be expected of a Member or Member Firm.

Representative means a solicitor, advocate or counsel or a Member or any other person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

The Financial Reporting Council means The Financial Reporting Council Limited, a company limited by guarantee and registered in England No. 2486368, and any other body which takes over the functions of The Financial Reporting Council.

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) appointed on behalf of the AADB by the **Board Convener**.

UK-connected company means:-

- (a) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
- (b) any company in the same group (as defined in section ~~126153~~ of the Companies Act ~~20061989~~) as such a company; and
- (c) any associate (as defined in section ~~521260~~ of the Companies Act ~~19892006~~) of such a company or such a group company.

UK-connected business means:

- (a) any sole-trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and
- (b) any associate (as defined in section ~~521260~~ of the Companies Act ~~20061989~~) of such a sole-trader, firm or partnership.

2(2) Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

2(3) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

Scope of the Scheme

~~**3(1)**—A Member or Member Firm shall be liable to investigation on the grounds set out in paragraph 5(1) below.~~

~~3(2) — A Member or Member Firm shall be liable to disciplinary proceedings on the grounds set out in paragraph 5(3) below.~~

~~3(3) — For the avoidance of doubt, anything said, done or omitted by:-~~

~~(i) — an employee of a Member Firm within the scope of his employment, actual or ostensible; or~~

~~(ii) — an agent of the Member Firm within the scope of his authority, actual or ostensible;~~

~~shall be taken as having been said, done or omitted by that Member Firm.~~

~~3(4) — A Member Firm shall not avoid liability to disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) is found to have fallen short of the standards reasonably to be expected of a Member Firm.~~

~~3(5) — A Member or Member Firm will be liable to investigation and discipline under this Scheme regardless of whether the act of misconduct took place before or after the Effective Date.~~

~~3(6) — A Member will be subject to investigation and discipline under this Scheme regardless of whether he was a Member at the time of the act of misconduct:-~~

~~—— (i) — if that act of misconduct took place after the Effective Date, even if the rules of the Participant to which the Member belongs provide otherwise; and~~

~~—— (ii) — if that act of misconduct took place before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct that took place when a Member was not a Member.~~

~~3(7) — A Former Member or Former Member Firm will be subject to investigation and discipline under this Scheme as if he or it were a Member or Member Firm:~~

~~(i) — if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise: and~~

~~(ii) — if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct by a Former Member or Former Member Firm.~~

The Board

43 Without prejudice to the generality of the powers of the Board under the AADB Memorandum and Articles of Association, the Board shall have power:-

(i) to make such Regulations as the Participants shall agree with the Board for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that they are not inconsistent with this Scheme and that there shall have been prior consultation by the Board with the Participants;

(ii) to provide the Executive Counsel and the Disciplinary Decisions Committee with procedural guidelines concerning the discharge of their his duties;

(iii) to authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;

- (iv) to authorise the remuneration of the members of any Tribunal, the Convener and the Disciplinary Decisions Committee and any other persons;
- (v) to delegate to the Chairman of the Board its powers under sub-paragraphs 34(iii) and 34(iv) ~~above paragraphs 8(1), 9(4), and sub-paragraph 9(7)(ii);~~ and
- (vi) to do all such other things as the Board considers incidental or conducive to the operation of this Scheme.

Grounds for Investigation and Disciplinary Proceedings

54(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Board:-

- (+) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and
- (b) the matter needs to be investigated to determine whether there may have been ~~an act of misconduct~~ or Relevant Conduct (“the second criterion”).

~~(ii) it appears that the Member or Member Firm has failed to comply with any of its obligations under paragraph 13(2) below.~~

54(2) In deciding whether a matter ~~raises or appears to raise important issues affecting the public interest in the United Kingdom for the purposes of sub-paragraph 5(1)(i)(a)~~ satisfies the first criterion, the Board shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Board shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

~~54~~(3) A Member or Member firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers that:-

- (i) there are grounds for delivering to the ~~Board~~ Disciplinary Decisions Committee a ~~f~~Formal ~~e~~Complaint alleging Relevant Conduct under paragraph 7(7) below ~~alleging an act or acts of misconduct~~ by that Member or Member Firm; or
- (ii) there are grounds for ~~submitting~~ delivering to the Disciplinary Decisions Committee to a Disciplinary Tribunal a ~~f~~Formal ~~e~~Complaint under paragraph 7(7) below alleging that the Member or Member Firm has failed to carry out any of its obligations under sub-paragraphs 13(1) or 13(2) below.

~~5(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye law, rule, regulation or guidance of any of the AADB Participants, which applies to him or it.~~

~~4(4) A Member shall be liable to be disciplined under this Scheme only if he is, when a Formal Complaint is delivered to the Disciplinary Decisions Committee under sub-paragraph 6(7)(c), or was, at the time of any alleged conduct constituting Relevant Conduct:-~~

- ~~(i) a citizen or subject of the United Kingdom; or~~
- ~~(ii) working in the United Kingdom; or~~
- ~~(iii) working in a United Kingdom registered audit firm; or~~

(iv) working in, involved in providing services to or involved in auditing a UK-connected company or UK-connected business.

4(5) A Member or Member Firm will be liable to investigation and discipline under this Scheme:

(i) regardless of whether the Relevant Conduct took place before or after the Effective Date, and

(ii) regardless of whether he was a Member at the time of the Relevant Conduct, provided that, where the Relevant Conduct took place before the Effective Date, the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct that took place when a Member was not a Member, or

4(6) A Former Member or Former Member Firm will be subject to investigation and discipline under this Scheme as if he or it were a Member or Member Firm in respect of Relevant Conduct which took place while he was a Member or it was a Member Firm:

(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise: and

(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of Relevant Conduct by a Former Member or Former Member Firm.

4(7) A Member Firm shall not avoid liability to disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any

partner, director or employee acting with actual or ostensible authority) is found to be Relevant Conduct.

4(8) For the avoidance of doubt, anything said, done or omitted by:-

(i) an employee of a Member Firm within the scope of his employment, actual or ostensible; or

(ii) an agent of the Member Firm within the scope of his authority, actual or ostensible ,

shall be taken as having been said, done or omitted by that Member Firm.

Decision to Investigate

~~65(1)~~ ~~Without prejudice to paragraph 13(3), an~~An investigation under this Scheme may be instituted in either of the circumstances described in sub-paragraphs 65(2) and 65(8).

~~65(2)~~ Where an AADB Participant:-

(i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and

(ii) considers that the conduct of one or more of its Members or Member Firms may ~~have committed an act of misconduct~~have constituted Relevant Conduct in relation to that matter; and

(iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AADB Participant in relation to the conduct in question,

then the AADB Participant shall refer that matter to the AADB and request that the AADB conduct an investigation. Such a request from a Participant

shall be published by the Board if it thinks fit. In the event that an AADB Participant is in doubt as to whether a particular matter should be referred to the AADB then the AADB Participant shall consult with the AADB for guidance.

65(3) Upon receipt of a reference pursuant to sub-paragraph 65(2), the Board shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.

65(4) The decision of the Board to accept or decline the reference shall depend on whether, in its opinion, the criteria at sub-paragraph 54(1), taking account of the considerations in sub-paragraph 54(2), are met in relation to the matter referred.

65(5) Where the Board has decided to accept a reference made pursuant to sub-paragraph 65(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the AADB Participants.

65(6) If, in the opinion of the Board, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the AADB Participant, or that any matters contained within the reference from the AADB Participant should be excluded from the investigation, the Board may decide either to include or exclude any such matters from the investigation as appropriate.

65(7) Where the Board has decided to decline a reference made pursuant to sub-paragraph 65(2) it shall:-

- (i) give its reasons for the decision within fourteen days
- (ii) promptly state in writing its decision and the reasons for it and supply a copy thereof to the relevant AADB Participant; and
- (iii) if it thinks fit publish its decision.

65(8) Where an AADB Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Board is aware or the Board otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and, in either case, the Board:-

- (i) is of the opinion that the grounds for an investigation under sub-paragraph 54(1), taking account of the considerations in sub-paragraph 54(2), have been met; and
- (ii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AADB Participant in relation to the conduct in question,

the Board may, after consultation with any AADB Participant whose Members or Member Firms may be concerned in an investigation, decide that the matter shall be dealt with by the AADB in accordance with this Scheme.

65(9) Where the Board has decided pursuant to sub-paragraph 65(8), that a matter should be dealt with by the AADB it shall give notice in writing of its decision and the reasons for it to the AADB Participants. Upon receipt of such notice, the relevant AADB Participant shall forthwith suspend any investigation relating to the matter on its part.

5(10) Where the Board considers that it has insufficient information about a matter to determine whether the grounds for an investigation under sub-paragraph 4(1), taking account of the considerations in sub-paragraph 4(2), have been met, it may direct the Executive Counsel to make preliminary enquiries before deciding whether or not the matter should be investigated. In that event, the relevant AADB Participant shall be informed accordingly by the Board and, if the matter has been referred to the Board pursuant to sub-paragraph 5(2), the time in which the Board shall be required to decide whether or not to investigate the matter shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

Investigation

76(1) (i) To assist the Board in exercising its powers under paragraph **65**, it, and the Executive Counsel on its behalf, has power to require any AADB Participant to provide to him such documentary information in its possession, or under its control, as the Board or the Executive Counsel, as the case may be, shall reasonably think fit and as the AADB Participant can lawfully provide.

(ii) The foregoing power of the Board, and the Executive Counsel on its behalf, to require any AADB Participant to provide documentary information shall include the power to call on it:-

(a) to permit the inspection and taking of copies of the documentary information, and

(b) to the extent reasonable, to supply copies of such documentary information at its own expense.

For the avoidance of doubt, documentary information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.

76(2) Where a reference is accepted by the Board under sub-paragraphs **65(3)** and **65(4)**:-

(i) the scope of the investigation shall be set out within the notice given by the Board referred to at sub-paragraph **65(5)**;

(ii) in accordance with sub-paragraph **65(6)**, such notice shall not be limited by the terms of the reference given by the AADB Participant under sub-paragraph **65(2)** and shall include or exclude any matters relating to the matter as the Board shall see fit; and

(iii) the relevant AADB Participant shall supply to the Board any material which is in the possession, or under the control, of that AADB Participant which may reasonably be required for the purposes of the investigation and which the AADB Participant can lawfully provide.

76(3) Where the Board decides under sub-paragraph 65(8) that a matter shall be assumed by the AADB to be dealt with in accordance with this Scheme:-

(i) the scope of the investigation shall be set out within the notice in writing given by the Board as referred to at paragraph 65(9); and

(ii) the relevant AADB Participant shall supply to the Board any material which is in the possession, or under the control, of that AADB Participant which may reasonably be required for the purposes of the investigation.

76(4) In either case identified at sub-paragraphs 76(2) and 76(3), the Board shall:-

(i) transmit the notice in writing, together with any further material obtained pursuant to sub-paragraphs 6(1) or 76(2)(iii), to the Executive Counsel to be dealt with in accordance with this Scheme, and

(ii) publish the fact of its decision to investigate unless this would not, in the opinion of the Board, be in the public interest.

76(5) Upon receipt of the documents transmitted pursuant to sub-paragraph 76(4)(i), the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers appropriate ~~for the purposes of conducting the investigation~~. The Executive Counsel shall have power on behalf of the AADB to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

~~76~~(6) (i) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation that he is conducting then:-

(~~ia~~) the Executive Counsel shall report those facts and circumstances to the Board; and

(~~ib~~) the Board, after consultation with the relevant AADB Participant (but within the Board's sole discretion), may direct ~~in writing~~ that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the AADB Participants and the Members or Member Firms ~~concerned~~ accordingly.

(ii) If, in the course of an investigation, the Executive Counsel considers that the scope of an investigation, as set by the Board under sub-paragraph 6(2) or 6(3) of the Scheme (and whether or not already amended in accordance with sub-paragraph 6(6)(i) above) should be reduced, then:-

(a) the Executive Counsel shall report to the Board with his reason(s) for considering that the scope should be so reduced; and

(b) the Board may direct that the scope of the Executive Counsel's investigation shall be reduced and shall inform the AADB Participants and the Members or Member Firms concerned accordingly.

~~76~~(7) If, following his investigation, the Executive Counsel considers that there is a realistic prospect that a Tribunal will find that the conduct of a ~~any~~ Members or Member Firms ~~concerned appear to have committed an act of misconduct constitutes Relevant Conduct, or that a Member or Member Firm has ~~or to~~ ~~have~~ failed to comply with his or its obligations under sub-paragraphs 13(1) or~~

13(2), then the Executive Counsel shall, ~~subject to paragraphs 7_(8) and 7(9);~~
in the order set out below:-

- (a) notify the Members or Member Firms concerned of his findings and the reasons for them and give each Member or Member Firm an opportunity to make written representations to him within such reasonable time as the Executive Counsel shall specify;
- (b) consider whether the written representations provided by the Members or Member Firms concerned have given a satisfactory response to his findings; and
- (c) ~~if, in the opinion of the Executive Counsel he still considers that there appears to be a realistic prospect that a Tribunal will find that the conduct of a Member or Member Firm constitutes Relevant Conduct, or that a Member or Member Firm has failed to comply with his or its obligations under paragraph 13(1) or 13(2), the written representations provided have not given a satisfactory response, notify the Board thereof; he shall draft a Formal Complaint against the Member or Member Firm and deliver this, together with supporting documents, to the Disciplinary Decisions Committee, to the Member or Member Firm concerned, and to the Board. and~~
- ~~(d) — deliver to the Board a formal complaint against any Member or Member Firm concerned, which may be based on his amended findings having regard to sub-paragraphs 7(7)(b) and 7(7)(c).~~

6(8) (i) After receiving a copy of the Formal Complaint and supporting documents in accordance with sub-paragraph 6(7)(c), the Member or Member Firm concerned may, within 21 days, make written representations to the Disciplinary Decisions Committee.

(ii) Any written representations made by the Member or Member Firm concerned to the Disciplinary Decisions Committee in accordance with sub-paragraph (i) above shall at the same time be copied by the Member or Member Firm to the Executive Counsel.

6(9) If the Executive Counsel either:

(a) following his investigation, or

(b) having received any written representations supplied by the Member or Member Firm in accordance with sub-paragraph 6(7)(a) above,

considers that there is no realistic prospect that a Tribunal will find that the conduct of a Member or Member Firm constitutes Relevant Conduct, or that a Member or Member Firm has failed to comply with his or its obligations under sub-paragraphs 13(1) or 13(2), he shall report this to the Disciplinary Decisions Committee and to the Board and such report shall contain a statement of his reasons and shall be dated and signed by him.

~~7(8) A Member shall be liable to be disciplined under this Scheme only if he is, when a formal complaint is delivered under sub-paragraph 7(7)(d), or was, at the time of any alleged act of misconduct~~

~~(a) a citizen or subject of the United Kingdom; or~~

~~(b) working in the United Kingdom; or~~

~~(c) working in a United Kingdom registered audit firm; or~~

~~(d) working in, involved in providing services to or involved in auditing a UK-connected company or UK-connected business.~~

~~7(9) Notwithstanding that the Executive Counsel considers that a Member appears:-~~

~~_____~~
~~(i) to have committed an act of misconduct; and~~

~~_____~~
~~(ii) to be within one or more of the four categories listed in paragraph 7(8);~~

~~_____ the Executive Counsel shall take into account the existence and nature of other authorities and bodies outside the United Kingdom to which the Member may be subject for acts of misconduct. If, in consequence, the Executive Counsel is of the opinion that it would be inappropriate for the Member's conduct to be dealt with under the Scheme, the Executive Counsel may decide not to deliver a formal complaint in respect of the Member's conduct.~~

~~7(10)~~6(10) (i) A Member or Member Firm may, either voluntarily or at the invitation of the Executive Counsel at any stage (including, for the avoidance of doubt, during the hearing before the Disciplinary or Appeal Tribunal), make an admission in respect of some or all of the alleged ~~acts of misconduct~~Relevant Conduct or alleged failures to comply with his or its obligations under sub-paragraphs 13(1) or 13(2) and such admission, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission of the ~~act of misconduct~~Relevant Conduct or failure to comply.

(ii) Any such admission shall (if made prior to a ~~f~~Formal ~~e~~Complaint being submitted to the ~~Board~~Disciplinary Decisions Committee by the Executive Counsel) be referred to in any ~~f~~Formal ~~e~~Complaint delivered by the Executive Counsel to the ~~Board~~Disciplinary Decisions Committee. Such ~~f~~Formal ~~e~~Complaint must include an agreed statement agreed with of facts signed by the Executive Counsel and the Member or Member Firm concerned giving particulars sufficient to enable the admitted ~~act or acts of misconduct~~Relevant Conduct or failure to comply to be properly understood.

~~7(11) (i) If, following his investigation, the Executive Counsel does not deliver a formal complaint under paragraph 7(7) against a Member or Member Firm who or which has been investigated, he shall report that fact to the Board and such report shall include a statement of his reasons therefore. Any such report shall be dated and signed by the Executive Counsel.~~

~~(ii) The Board shall supply a copy of any such report to any Member or Member Firm concerned and each AADB Participant.~~

~~7(12) The Board shall publish the outcome of the Executive Counsel's investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the~~

Disciplinary Decisions Committee

~~7(1) The Disciplinary Decisions Committee shall be a standing committee. It shall sit in private and shall consist of the following members, as appointed by the Financial Reporting Council's Nomination Committee from time to time:~~

~~(i) a legally qualified Chairman;~~

~~(ii) a legally qualified Deputy Chairman,~~

~~(iii) two Members; and~~

~~(iv) two lay persons (who are neither lawyers nor Members).~~

~~7(2) Save as provided in sub-paragraph 7(16) below, the Disciplinary Decisions Committee shall, at any given meeting, consist of, and shall be quorate when comprised of:~~

~~(i) the Chairman (or in his/her absence, the Deputy Chairman);~~

(ii) one Member; and

(iii) one lay person.

7(3) (i) No person who is:

(a) a serving member of the governing body of, or any officer or employee of, any of the AADB participants; or

(b) a member, director or officer of any of The Auditing Practices Board Limited, The Financial Reporting Council Limited, The Accounting Standards Board Limited, The Professional Oversight Board for Accountancy Limited, The Financial Reporting Review Panel Limited or the AADB or a member appointed to any Board of any subsidiary company of The Financial Reporting Council Limited,

shall be appointed to the Disciplinary Decisions Committee, save that former members of the governing bodies and former officers or employees of AADB participants, or former members, Board members, directors, employees or officers of any of the organisations listed in sub-paragraph (b) above, shall not be precluded from appointment provided that at least one year has elapsed since the termination of the said appointment or employment.

(ii) Any individual appointed to the Panel in accordance with sub-paragraph 10(1) but who has never served on a Tribunal shall not be precluded from appointment to the Disciplinary Decisions Committee provided that they shall first resign from the Panel.

Evidence/Voting

7(4) Subject to this Scheme, the procedure adopted by the Disciplinary Decisions Committee shall be in accordance with the Regulations.

7(5) In reaching any decision, the Disciplinary Decisions Committee may take into account any relevant evidence, whether or not such evidence would be admissible in court.

7(6) The Disciplinary Decisions Committee shall at all times apply the rules of natural justice.

7(7) (i) Any matter to be decided by the Disciplinary Decisions Committee shall be decided by a majority of votes.

(ii) In the event that an equal number of votes are cast in respect of any motion, that motion shall not be carried.

7(8) (i) The Disciplinary Decisions Committee may adjourn its consideration of a matter to seek further information and/or representations from the Executive Counsel or the Member or Member Firm.

(ii) The Executive Counsel may, following a request for further information and/or representations or the receipt of further information and/or representations obtained for the purpose of sub-paragraph 7(8)(i) above, amend or withdraw the Formal Complaint. If the Executive Counsel amends the Formal Complaint, the procedure set out at sub-paragraph 6(7)(c) shall be repeated. If the Executive Counsel withdraws the Formal Complaint, the procedure at sub-paragraph 6(9) shall apply.

Formal Complaint recommended by Executive Counsel

7(9) After reviewing the Formal Complaint, the supporting documents and any further representations submitted from the Member or Member Firm concerned, the Disciplinary Decisions Committee shall determine whether:

(i) there is a realistic prospect that a Tribunal will find that the conduct of a Member or Member Firm constitutes Relevant Conduct, or that a Member or Member Firm has failed to comply with an obligation under sub-paragraphs 13 (1) and 13(2); and

(ii) with regard to the Desirability Criteria, a hearing is desirable.

7(10) Where the Disciplinary Decisions Committee determines that the requirements of sub-paragraph 7(9) are met in relation to the entire Formal Complaint, it shall notify the Board, giving reasons for its decision.

7(11) Where the Disciplinary Decisions Committee determines that the requirements of sub-paragraph 7(9) are met in relation to part only of the Formal Complaint, it shall notify the Board, advising which of the allegations it determines do and which do not meet the requirements of sub-paragraph 7(9), giving reasons for its decision.

For the purposes of paragraphs 8, 9 and 10 of this Scheme, where a determination is made in accordance with this sub-paragraph 7(11), “Formal Complaint” shall mean the Formal Complaint as amended by deletion of the allegations in respect of which the requirements of sub-paragraph 7(9) are not met.

7(12) Where the Disciplinary Decisions Committee determines that the requirements of sub-paragraph 7(9) are not met in relation to the Formal Complaint it shall notify the Board, giving reasons for its decision, and no further action shall be taken save as provided for in sub-paragraphs 7(15), and 8(1).

No Formal Complaint recommended by Executive Counsel

7(13) Where, following his investigation, and in accordance with sub-paragraph 6(9), the Executive Counsel prepares a report but does not deliver a Formal

Complaint, the Disciplinary Decisions Committee shall consider the Executive Counsel's report and shall:

- (i) accept the report and direct that the case be closed, and shall notify the Board, giving reasons for its decision, and no further action shall be taken save as provided for in sub-paragraphs 7(15) and 8(1); or
- (ii) request that Executive Counsel review such further issues as the Disciplinary Decisions Committee may direct.

7(14) Where Executive Counsel has reviewed any issues as directed by the Disciplinary Decisions Committee in accordance with sub-paragraph 7(13)(ii) above, and determines that a Formal Complaint still should not be delivered, he shall report that fact to the Disciplinary Decisions Committee, which shall direct that the case be closed, whereupon it shall notify the Board, and may submit to the Board a report on the matter, and no further action shall be taken save as provided for in sub-paragraph 7(15) and 8(1).

Revival

7(15) Where a case is closed by the Disciplinary Decisions Committee pursuant to sub-paragraphs 7(12), 7(13) or 7(14) or part of a case is closed pursuant to sub-paragraph 7(11) it may be resubmitted by the Executive Counsel to the Disciplinary Decisions Committee which may reconsider the case if it is satisfied that the circumstances surrounding the case appear to have changed so fundamentally since the Disciplinary Decisions Committee's consideration of the matter that the matter ought to be revived.

Withdrawal of Formal Complaint

7(16) (i) Where, after a Formal Complaint has been notified by the Disciplinary Decisions Committee to the Board in accordance with sub-paragraphs 7(10) or 7(11), but before a Disciplinary Tribunal has met to hear the Formal Complaint, the Executive Counsel wishes to withdraw the

Formal Complaint he shall draft a report for the consideration of the Chairman of the Disciplinary Decisions Committee and request that the case be closed.

(ii) The Chairman of the Disciplinary Decisions Committee shall consider the report submitted by Executive Counsel and direct that the case be closed, whereupon he shall notify the Board, and may submit to the Board a report on the matter, and no further action shall be taken save as provided for in sub-paragraph 8(1).

Disciplinary Proceedings

8(1) (i) Where the ~~Executive Counsel~~ Disciplinary Decisions Committee notifies the Board of a decision made in accordance with sub-paragraphs 7(10), 7(11), 7(12), 7(13)(i), 7(14) and 7(16) and delivers to it a formal complaint in accordance with paragraph 7(7), the Board shall, ~~serve the formal complaint on the Member or Member Firm concerned and shall,~~ as soon as practicable appoint a Disciplinary Tribunal to hear the formal complaint in accordance with the provisions of this Scheme:-

(a) notify the Member or Member Firm concerned and the Executive Counsel of the decision and the reasons for it, and

(b) publish the outcome of the Disciplinary Decisions Committee's consideration of the matter in such manner as it thinks fit, unless this would not, in the opinion of the Board, be in the public interest.

(ii) In addition to the steps set out at sub-paragraph (i) above, where the Disciplinary Decisions Committee notifies the Board of a decision made in accordance with sub-paragraphs 7(10) or 7(11), the Board shall, as soon as practicable, send the Formal Complaint to the Convener.

8(2) The Convener shall, as soon as practicable following receipt of the Formal Complaint, appoint a Disciplinary Tribunal to hear the Formal Complaint in accordance with the provisions of this Scheme. The Convener shall deliver to the Board details of the Tribunal appointed.

~~8(23)~~ Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any ~~f~~Formal ~~e~~Complaint shall be in accordance with the Regulations.

~~8(34)~~ In coming to ~~its~~a decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.

~~8(45)~~ After hearing the ~~f~~Formal ~~e~~Complaint, the Disciplinary Tribunal shall, in relation to the Member or Member Firm which is the subject of the ~~f~~Formal ~~e~~Complaint, ~~either decide:-~~

(i) ~~whether, some or all of the allegations set out in the Formal Complaint are proved; and make an adverse finding in respect of some or all of the alleged acts of misconduct or failures to comply with the Member's or Member Firm's obligations under paragraph 13(2) forming the subject matter of the formal complaint, or~~

(ii) ~~whether the allegations so proved constitute Relevant Conduct or that a Member or Member Firm has failed to comply with an obligation under sub-paragraphs 13(1) or 13(2) dismiss the formal complaint.~~

~~8(56)~~ Where the Disciplinary Tribunal makes an adverse finding in relation to a Member or Member Firm, then:-

(i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this

Scheme as it considers appropriate; but, if the Relevant Conduct ~~act of misconduct~~ occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more severe than could have been imposed under the relevant Participant's rules at the Effective Date;

- (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to sub-paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph 12, the whole or part of the costs of, and incidental to, the investigation and the hearing of the formal complaint before the Disciplinary Tribunal. The amount to be paid by the Member or Member Firm is to be determined by the Disciplinary Tribunal provided that, where the Member or Member Firm has made an admission under sub-paragraph 7(10)6(10), no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission; and
- (iii) the Tribunal may make no order against the Member or Member Firm, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

8(7) Where the Disciplinary Tribunal decides that:

- (i) none of the allegations set out in the Formal Complaint is proved, or
- (ii) the allegations proved do not constitute Relevant Conduct or a failure to comply with an obligation under sub-paragraphs 13(1) or 13(2),

it shall dismiss the Formal Complaint.

8(68) If Where the Disciplinary Tribunal dismisses the ~~f~~Formal ~~e~~Complaint it may, on the application of ~~it may on~~ the Member's or Member Firm's concerned, order that ~~application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel~~

~~(including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order~~ the Board ~~to~~ pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the ~~f~~Formal ~~e~~Complaint being served on the Member or Member Firm.

8(9) The Tribunal's discretion to award costs to the Member or Member Firm concerned shall be restricted to circumstances where the Tribunal finds that there has been misfeasance on the part of:

(i) the Executive Counsel;

(ii) any member of the Disciplinary Decisions Committee; or

(iii) any other person engaged to assist with the investigation or disciplinary proceedings on behalf of the AADB.

8(710) ~~Following its decision under paragraph 8(4), t~~The Disciplinary Tribunal shall ~~prepare a report on the Member or Member Firm concerned setting~~ out in writing the Tribunal's decision ~~or decisions pursuant to sub-paragraphs 8(5), 8(6), 8(7) and 8(8) and the reasons for it or them~~ and any related order or orders. The Disciplinary Tribunal shall and send the report a copy of its written decision and reasons to the Member or Member Firm concerned, the Executive Counsel, and the Board which shall then send a copy to the ~~Member or Member Firm concerned and to the~~ AADB Participants.

8(811) (i) Unless the Disciplinary Tribunal shall otherwise decide, an adverse finding in relation to a Member or Member Firm and any order under sub-paragraph 8(56) against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the

order provided that the Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under sub-paragraph 9(1). If the person appointed under sub-paragraph 9(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed appellant. If the person appointed under sub-paragraph 9(4) grants leave to appeal, the order shall take effect (subject to the relevant Appeal Tribunal decision) from the next working day after the date notification of the relevant Appeal Tribunal decision is sent to the Appellant.

8(912) The Board shall publish the the report or reports written decision and reasons of prepared by the Disciplinary Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Appeals

9(1) If a-the Disciplinary Tribunal makes an adverse finding in relation to any Member or Member Firm, with or without any order under sub-paragraph 8(56), then subject to sub-paragraph 9(2) the Member or Member Firm may, within 28 days after the date on which the finding and/or order is notified to him or it (provided always that a longer period may be allowed as set in sub-paragraph 9(5) below), give to the Board notice of appeal against the finding and/or order.

9(2) An appeal under sub-paragraph 9(1) against a decision of a-the Disciplinary Tribunal can be made on the following grounds:-

- (i) that the decision of the Disciplinary Tribunal was perverse or wrong in law; and/or
- (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or

- (iii) that significant and relevant new evidence has come to light which was not previously available to the appellant and could not have become available to it on the making of reasonable enquiry; and/or
- (iv) that the sanction imposed pursuant to sub-paragraph 8(56) was manifestly unreasonable.

9(3) Any notice of appeal shall:-

- (i) be in writing;
- (ii) identify the finding and/or order appealed against; and
- (iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

9(4) Upon receipt of a notice of appeal, the Board shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

9(5) If the notice of appeal was not given to the Board within the 28 day period set out in sub-paragraph 9(1), the person appointed under sub-paragraph 9(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

9(6) Unless he has refused leave to appeal under sub-paragraph 9(5), the person appointed under sub-paragraph 9(4) shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in sub-paragraph 9(2).

9(7) (i) Following his decision to give leave to appeal under sub-paragraph 9(6), or not to give leave to appeal, the person appointed under sub-paragraph 9(4) shall notify the Board of his decision ~~or decisions~~ and the Board shall notify each Member or Member firm concerned, ~~and~~ each AADB Participant and the Convener; and

(ii) if the person appointed under sub-paragraph 9(4) gives leave to appeal, the Convener shall, as soon as practicable, appoint an Appeal Tribunal to hear the appeal in accordance with the provisions of this Scheme. The Convener shall deliver to the Board, the Executive Counsel and the Member or Member Firm concerned details of the Appeal Tribunal appointed.

~~the Board, once in receipt of such notice for leave to appeal, shall, if leave to appeal is given, appoint an Appeal Tribunal.~~

(iii) The order of the relevant Disciplinary Tribunal shall apply if leave to appeal is not given.

9(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any ~~f~~Formal ~~e~~Complaint or appeal shall be in accordance with the Regulations.

9(9) In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.

9(10) An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to sub-paragraph 9(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in sub-paragraph 8(~~5~~6).

9(11) On an appeal the Appeal Tribunal shall have power to:-

- (i) affirm, vary or rescind any adverse findings or orders of the Disciplinary Tribunal in relation to or against any Appellant;
- (ii) substitute in relation to or against such Appellant, any other adverse findings and/or orders which it considers appropriate and which the Disciplinary Tribunal could have made under sub-paragraph 8(56) or 8(8);
- (iii) save that the Appeal Tribunal shall so exercise its powers under sub-paragraphssections 9(10)(i) and 9(10)(ii) that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the Disciplinary Tribunal.
- (iv) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to sub-paragraph 9(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant adverse findings or orders or failing that by a fresh Disciplinary Tribunal;
- (v) order that any Appellant be required to pay, in the manner set out in paragraph 12 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal;
- (vi) should it grant the appeal, the Appeal Tribunal may, on the application of the Member or Member Firm, on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion order that the Board ~~to~~ pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the ~~f~~Formal ~~e~~Complaint being served on the Member or Member Firm. The Appeal Tribunal's

discretion to award costs to the Member or Member Firm concerned shall be restricted to the circumstances set out in paragraph 8(9) above.

9(12) ~~The Following its decision under paragraph 9(11), the~~ Appeal Tribunal shall set out its prepare a report on the Member, Member Firm, Members or Member Firms concerned setting out the Appeal Tribunal's decision or decisions pursuant to sub-paragraph 9(11) and any related order or orders in writing. The Appeal Tribunal shall and send the report or reports a copy of its written decision and reasons to the Executive Counsel, the Member or Member Firm concerned, and to the Board which shall then send a copy to the ~~Member or Member Firm concerned and to the~~ AADB Participants.

9(13) ~~The A~~ decision ~~or decisions~~ of the Appeal Tribunal shall take effect from the next working day after the date date it is announced notification is sent to the Member or Member Firm.

9(14) At any time before the ~~date of a report which sets out the decision of an~~ Appeal Tribunal gives its decision in respect of the appeal of an Appellant in accordance with sub-paragraph 9(12), such Appellant may abandon his or its appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm ~~under sub-paragraph 8(5)(i) and 8(5)(ii) anythe~~ adverse findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal and may make an order under sub-paragraph 9(11)(v) in relation to the whole or part of the costs of and incidental to the appeal.

9(15) The Board shall publish the written decision and reasons of report prepared by the Appeal Tribunal as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary and Appeal Tribunals

10(1) (i) The Board shall maintain a Panel of individuals who are appointed by the Board from time to time and who, in the opinion of the Board, have the appropriate qualifications and experience to sit on a Tribunal.

Appointment to the Panel shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

(ii) No person who has ever been appointed to the Disciplinary Decisions Committee shall be eligible to be appointed to the Panel.

10(2) A Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-

- (i) Each Tribunal shall consist of either three or five persons as the Board in its absolute discretion thinks fit.
- (ii) The Chairman of a Disciplinary Tribunal shall be a lawyer (a former member of the judiciary, a barrister, an advocate or a solicitor). The eChairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.
- (iii) A three-person Tribunal must comprise in addition to the Chairman:-
 - (a) a layperson (who is neither a lawyer nor an accountant); and
 - (b) an accountant Member.
- (iv) A five-person Tribunal must include in addition to the Chairman:-
 - (a) at least one layperson (who is neither a lawyer nor a Member an accountant); and
 - (b) two (but no more than two) accountants Members.
- (v) Each accountant appointed to a Tribunal shall be a Member with appropriate experience.

- (vi) No serving member of the governing body of, or any officer or employee of, any of the AADB Participants shall be appointed to a Tribunal. However, former members of the governing bodies and former officers or employees of AADB Participants shall not be precluded from appointment provided that at least one year has elapsed since the termination of said appointment or employment.
- (vii) No person who is a member, director or officer of any of The Auditing Practices Board Limited, The Financial Reporting Council Limited, The Accounting Standards Board Limited, The Professional Oversight Board for Accountancy Limited, The Financial Reporting Review Panel Limited or the AADB or a member of the Council of The Financial Reporting Council Limited or a member appointed to any ~~B~~board of any subsidiary company of The Financial Reporting Council Limited shall be appointed to a Tribunal. A former member, council member, board member, director, employee or officer as aforesaid shall not be precluded from appointment provided that at least one year has elapsed since the termination of said appointment or employment.
- (viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the adverse finding and/or order which is the subject of the appeal, or with any earlier proceedings relevant thereto, shall be appointed to a Tribunal.

10(3) Subject to sub-paragraphs 10(2)(i) to 10(2)(v) (inclusive), if more than one Disciplinary Tribunal is appointed to hear ~~f~~Formal ~~e~~Complaints arising out of the same matter, any of the members appointed to one of the Tribunals may be appointed to the other or others.

10(4) Where there are two or more notices of appeal against findings or orders made by the same Disciplinary Tribunal, the ~~Board-Convener~~ may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to sub-paragraphs 10(2)(i) to 10(2)(viii) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against adverse findings and/or orders which are in any way

connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

10(5) Subject to the provisions of this Scheme, at any time before the hearing of a ~~f~~Formal ~~e~~Complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the ~~f~~Formal ~~e~~Complaint or appeal.

10(6) A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

- (i) the Chairman is unable to be present; or
- (ii) there shall not be present at least three members of the Tribunal; or
- (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one accountant and one layperson who is neither a lawyer nor an accountant.

10(7) If a session of a hearing can and does proceed in the absence of a tribunal member, that member shall not participate in any further sessions or consideration of the matter. If a session is postponed pursuant to sub-paragraph 10(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the ~~Board which~~ Convener who shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate). In any such case where the ~~Board~~ Convener decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, ~~it~~ he shall appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal any of the members of the original Tribunal may be appointed to the new Tribunal. The

Convener shall deliver to the Board, the Executive Counsel, and the Member or Member Firm concerned details of the new Chairman, Tribunal Member, or Tribunal (as appropriate).

10(8) (i) Any matter to be decided by a Tribunal shall be decided by a majority of votes.

~~(ii) In the case of an equality of votes, the Chairman shall have a second vote. In the event that an equal number of votes are cast in respect of any motion, that motion shall not be carried.~~

10(9) The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where in the opinion of the Tribunal the circumstances are such that publicity would prejudice the interests of justice.

10(10) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) or respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm the subject of the ~~f~~Formal ~~e~~Complaint or appeal before the Tribunal. Every Tribunal shall give any Member or Member Firm the subject of a ~~f~~Formal ~~e~~Complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal. Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.

10(11) The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence

10(12) The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

(i) ensure fairness between the parties; and

- (ii) preserve the interests of justice.

10(13) If the subject matter of a ~~f~~Formal ~~e~~Complaint to be heard arises wholly or mainly in Scotland, the Disciplinary Tribunal shall sit in Scotland, the Chairman shall be a former member of the Scottish judiciary, an advocate or a solicitor qualified in Scotland and ~~each~~ at least one non-accountant member shall be a person residing in Scotland.

Standard of Proof

11 The standard of proof ~~on which a formal complaint, or any part thereof, is to be decided shall be~~ to be applied by a Tribunal is the balance of probabilities civil standard of proof. ~~The more serious the allegation the higher the degree of probability that is required.~~

Payments

12(1) Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then:-

- (i) in the case of a Member, such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;
- (ii) in the case of a Member Firm, such monies:-
 - (a) shall be due from the Member Firm concerned; and/or
 - (b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the adverse finding or thereafter, whether or not they were Members or it was a Member Firm during any part of that time;

- (c) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in sub-paragraph 12(1)(ii)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;
- (iii) in either case, such monies shall be paid to the AADB on behalf of The Financial Reporting Council, and applied in the manner agreed between The Financial Reporting Council and the AADB Participants;
- (iv) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under sub-paragraph 9(5), such fine and/or costs shall be paid not later than 28 days after the date when the order takes effect under sub-paragraph 8(811)(i) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (v) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision is notified under sub-paragraph 9(11) to the Member or Member Firm and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (vi) the AADB will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;

- (vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more AADB Participants and in the case of a Member Firm the removal of registration by one or more AADB Participants shall be recommended.

12(2) Where a Tribunal makes an order for the payment of costs against the AADB, those costs shall be paid not later than 28 days after the date when the order takes effect and in the event that such costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment.

Obligations of Members and Member Firms

13(1) Every Member and every Member Firm shall at all times co-operate fully, and every Member Firm shall use its best endeavours to ensure that every employee of that Member Firm shall co-operate fully, with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal established pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to sub-paragraph 13(2).

13(2) The Executive Counsel shall have power by notice served on any Member or Member Firm to call on him or it to provide (to the extent that such Member or Member Firm can lawfully do so):-

- (i) to the Executive Counsel or to any person appointed or employed by him or by the Board on behalf of the AADB, information and explanation relevant to any matter under investigation orally and/or in writing as the Executive Counsel shall require, and
- (ii) information to the Disciplinary Decisions Committee in writing, as the Disciplinary Decisions Committee shall require, and

(iii) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

The foregoing power of the Executive Counsel by notice to call on any Member or Member Firm to provide information and/or explanation and/or evidence shall include the power to call on him or it:-

- (a) to permit the inspection and taking of copies of the books, documents, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member or Member Firm, and
- (b) to the extent reasonable, to supply copies of such books, documents, records, telephone recordings or computer held information of whatsoever kind at his or its own expense.

It shall be the duty of any Member or Member Firm on whom a notice is served under this sub-paragraph 13(2) to comply with it within the period of 14 days beginning with the date of service or such longer period as the Executive Counsel may allow.

~~13(3) If, at any time, the Executive Counsel considers that:-~~

- ~~(i) there are grounds upon which a Disciplinary Tribunal could make an adverse finding that one or more Members or Member Firms, whether or not they are within the scope of any investigation, have failed to carry out any obligation under paragraph 13(2), and~~
- ~~(ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,~~

~~He shall take the steps at sub paragraphs 7(7)(a) to 7(7)(d). Where a formal complaint under sub-paragraph 7(7)(d) specifies grounds which the Executive~~

~~Counsel alleges justify an adverse finding by reference to sub-paragraph 5(1)(ii), that formal complaint may be heard by the Disciplinary Tribunal which is hearing or is to hear another formal complaint, where the Board considers that to be appropriate when it appoints a Disciplinary Tribunal to hear the former formal complaint.~~

Proof of Certain Matters

14(1) The fact that a Member or Member Firm ~~is~~:-

~~(i) — has, before a Court of competent jurisdiction in the United Kingdom been convicted of an indictable offence (or elsewhere of an offence which would have been indictable had the offence been prosecuted in the United Kingdom), or~~

~~(ii) — has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted an indictable offence in the United Kingdom if the conduct in question had occurred there,~~

shall for the purposes of this Scheme be conclusive evidence of Relevant Conduct.

~~an act of mis-conduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.~~

~~**14(2)** The fact that a Member or Member Firm has before a Court of competent jurisdiction in the United Kingdom or equivalent jurisdiction outside the United Kingdom been convicted of a summary only offence may be considered by a Tribunal as evidence when determining whether that Member or Member Firm has committed an act of misconduct, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.~~

~~**14(2)** Production of a Certificate to the Tribunal purporting to be under the hand of a competent officer of court in the UK or overseas that a person or other legal~~

entity has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

14(3) The fact that a Member or Member Firm:-

- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986, ~~or~~ the Companies Act 1989 or the Companies Act 2006; or
- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986,

shall, for the purposes of this Scheme, be conclusive evidence of ~~an act of misconduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in, or at the time of, the disciplinary proceedings or disqualification order.~~ the findings of fact upon which the adverse findings or disqualification order is based.

14(4) Without prejudice to sub-paragraphs 14(1) and 14(3), a ~~A~~ finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil ~~or criminal~~ proceedings before a Court of competent jurisdiction in or outside the United Kingdom ~~or any court outside the United Kingdom~~;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in sub-paragraph 14(5);
- (iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of

section 34 (accountant's report) of the Solicitors Act 1974 or equivalent provision in Scotland, Northern Ireland or Ireland;

- (v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (vi) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in sub-paragraphs (i) to (v) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

14(5) The bodies referred to at sub-paragraph 14(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;
- (iii) any recognised self-regulating organisation or recognised professional body within the meaning of the Financial Services Act 1986;
- (iv) The Financial Reporting Review Panel;
- (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- (vi) any recognised supervisory body within the meaning of the Companies Act 1989;
- (vii) Any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (viii) Any body replacing, additional to or pre-dating a body identified in sub-paragraphs 14(~~54~~)(i) to (vii) and performing the same or broadly

similar functions, and whose regulatory arrangements are of a similar standing.

14(6) ~~Sub-p~~Paragraphs 14(1) to 14(5) (inclusive) are without prejudice to the generality of paragraphs 8(34) and 9(89) and nothing in ~~sub~~-paragraph 14(4) shall affect the evidential status of any report or other document not referred to in ~~sub~~-paragraph 14(4).

Legal Representation of Members

15 If a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because for example of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may after application require the AADB to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Member Firms

16 If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

Disclosure of Information

- 17 The Regulations may make provision enabling the Board or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the Board considers appropriate.

Transfers from the JDS

- ~~18 — The Board shall be empowered to accept the transfer to it from the JDS of any matter previously referred to the JDS and thereafter to deal with it under the applicable JDS and related regulations.~~

Amendment and termination of this Scheme

1918 This Scheme may be amended by the Board, with the agreement in writing of The Financial Reporting Council and the governing body of each of the AADB Participants, or terminated by the Board by giving notice of not less than six months expiring on 31st December in any year.

Adopted on the
[13th day of May 2004] by the AADB.

AADB Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in sub-paragraph 8(56)(i).

Members

Reprimand

Severe Reprimand

Exclusion as a Member of one or more AADB Participants and that the exclusion be for a recommended specified period of time

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more AADB Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

Member Firms

Reprimand

Severe Reprimand

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

Waiver/repayment of client fees

Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of any activity requiring such registration, authorisation or licence)

Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.



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