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The Conduct Committee: Operating procedures for reviewing corporate reporting

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Conduct Committee operating procedures for reviewing corporate reporting (“Operating Procedures”)

Part 1: Introduction

1. The Financial Reporting Council (“FRC”) is a company limited by guarantee and the UK’s independent regulator responsible for corporate reporting, auditing and corporate governance.
2. The Conduct Committee is a committee of the FRC Board established under the Articles of Association. Its current membership and terms of reference can be found at <https://www.frc.org.uk/About-the-FRC/FRC-structure/Conduct-Committee/Terms-of-Reference.aspx>.
3. The Conduct Committee is authorised¹ by the Secretary of State for the purposes of section 456 of the Companies Act 2006 (the “2006 Act”), meaning that it may make an application to the court for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a strategic report or a directors’ report does not comply, with the requirements of the 2006 Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report.
4. The Conduct Committee is also appointed² to exercise the functions set out at section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the “2004 Act”) to keep under review periodic accounts and reports that are produced by issuers of transferable securities and are required to comply with any accounting requirements imposed by Financial Conduct Authority (“FCA”) rules³. Where it thinks fit, the Conduct Committee informs the FCA of any conclusions it reaches in relation to any such accounts or reports. If requested by the FCA, the Conduct Committee will also exercise these functions in relation to any particular issuer of transferable securities in relation to whom those functions would not otherwise be exercisable.
5. Through the review of, or investigations into, complaints about company accounts and reports referred to in paragraph 3 and 4 above, (referred to throughout the Operating Procedures generically as “a Report” or “Reports”), the Conduct Committee exercises its functions with a view to ensuring that Reports, and the companies preparing them, comply with relevant accounting and reporting requirements and rules (“relevant accounting and reporting requirements”). It may also identify opportunities for, and encourage improvements to, the quality of companies’ future reporting.
6. Much of the work in support of the Conduct Committee’s performance of its statutory functions is carried out by;

¹ See the Supervision of Accounts and Reports (Prescribed Body) and Companies (Defective Accounts and Directors Reports) (Authorised Person) Order 2012.

² Ibid.

³ Rules which have the meaning provided for by section 103(1) of the Financial Services and Markets Act 2000.

- a. FRC staff including its contractors and secondees, (“FRC staff”);
 - b. the Corporate Reporting Review Committee, (“CRR Committee”), a sub-committee of the Conduct Committee, whose terms of reference and current membership can be found at <https://www.frc.org.uk/About-the-FRC/FRC-structure/Corporate-Reporting-Review-Committee.aspx>
 - c. the Financial Reporting Review Panel (“FRRP”) [https://www.frc.org.uk/Our-Work/Corporate-Governance-Reporting/Corporate-Reporting-Review/Financial-Reporting-Review-Panel-\(FRRP\).aspx](https://www.frc.org.uk/Our-Work/Corporate-Governance-Reporting/Corporate-Reporting-Review/Financial-Reporting-Review-Panel-(FRRP).aspx)
7. The CRR Committee comprises the Chair and Deputy Chairs of the FRRP. The Chair of the CRR Committee is also a member of the Conduct Committee. Other members of the CRR Committee may also be members of the Conduct Committee.
8. As far as possible, the Conduct Committee and any person involved in the review process seek to operate by agreement with the companies whose Reports are subject of a review, and in accordance with the principles of good regulation as set out in the Regulators Code.⁴ The Conduct Committee also seeks to comply with the requirements of relevant guidelines and recommendations issued under the authority of the European Securities and Markets Authority (“ESMA”).

Purpose of the Operating Procedures

9. The Operating Procedures are intended to:
- a. demonstrate that the Conduct Committee has satisfactory procedures in place for the purpose of carrying out its statutory functions⁵; and
 - b. provide transparency about the review process to those companies whose Reports may be reviewed in accordance with the Operating Procedures, and to complainants, investors, and the public generally.
10. The Operating Procedures should be read alongside the FAQs found at <https://www.frc.org.uk/Our-Work/FAQs.aspx> on the FRC’s website and other documents and web pages signposted throughout these procedures.

Advance clearance

11. The Conduct Committee does not operate a system of advance clearance; neither it, nor the CRR Committee, the FRRP nor FRC staff will give advice to a company or its auditors as to whether, in their opinion, a particular accounting treatment would or would not meet any relevant reporting requirement.

⁴ <https://www.gov.uk/government/publications/regulators-code> The Regulators’ Code came into statutory effect on 6 April 2014 under the Legislative and Regulatory Reform Act 2006, replacing the Regulators’ Compliance Code. It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

⁵ As required by the 2006 Act and the 2004 Act.

How Reports are selected for review

12. Although the Conduct Committee's authority extends to all companies that prepare Reports under the 2006 Act, in practice, and as agreed with the Department for Business, Energy and Industrial Strategy ('BEIS')⁶ Reports of companies are normally only selected for review in respect of public and large private companies as follows:
 - a. public limited companies ("PLC");
 - b. companies within a group headed by a PLC;
 - c. any private company not qualifying, or excluded from being treated, as a small or medium sized company under the 2006 Act;
 - d. any private company within a group which does not qualify as a small or medium sized group, or is within an ineligible group under the 2006 Act.
13. The Reports of FTSE 350 companies are selected on a rotational basis. Further factors influencing the selection of the Reports of companies, including FTSE 350 companies, include as follows;
 - a. specific industry sectors, for example those regarded as under particular stress; and
 - b. specific topical accounting issues that may give rise to greater risk of misstatement in Reports.

Complaints

14. Review work is also carried out in respect of Reports in response to complaints. The Reports of any company within the Conduct Committee's remit may be the subject of review on receipt of a complaint. Complaints can emanate from a number of sources including investors, and the press. Referrals may also be received from other regulators.
15. In addition, the FRC and the Conduct Committee are included as 'prescribed persons' for the purposes of whistleblowing legislation⁷. This means that a worker may disclose information to the FRC and/or the Conduct Committee about suspected or known wrongdoing in relation to concerns about their employer's compliance with relevant legislation, and will potentially qualify for the same employment rights and protections as if they had made a disclosure to their employer.⁸
16. More information about making a complaint to the FRC or raising a whistleblowing concern can be found at <https://www.frc.org.uk/About-the-FRC/Making-a-complaint-to-the-FRC/Whistleblowing.aspx>. More information regarding information sharing with complainants in respect of a review can be found in Part 3 below.

⁶ When it was the Department for Business, Enterprise and Skills

⁷ In the Public Interest Disclosure (Prescribed Persons) Order 2014 (S.I. 2014/2418)

⁸ Although the FRC is not responsible for deciding whether the individual who has made the disclosure qualifies for protection. Ultimately this will be decided by the employment tribunal in contested cases.

Part 2: The review process

17. A review is based solely on a Report/Reports and does not benefit from detailed knowledge of a company's business or an understanding of the underlying transactions entered into by that company. It is, however, conducted by those who have an understanding of the relevant accounting and reporting requirements.

Review by FRC staff

18. In the first instance, Reports are reviewed by FRC staff to ascertain whether it appears that there is, or may be, a question whether there is a breach of the relevant accounting and reporting requirements. The FRC staff may consult with the CRR Committee during their review or seek other independent advice.

19. Where it appears that there is, or may be, such a question, the CRR Director may write to the Chairman of the company and send a copy of the letter to the Finance Director and Audit Committee Chairman where practicable. The letter will;

- a. identify the matters of concern;
- b. invite the Chairman or their nominated representative to comment on those matters; and
- c. specify a date by which a response is expected.

20. Depending on the issues raised;

- a. there may be several rounds of correspondence and exchange of emails and phone calls during the review;
- b. there may be a meeting/meetings with company representatives and their advisers, FRC staff and members of the CRR Committee.

21. As a result of consideration of the matter and/or as a result of explanations or proposals provided on behalf of the company, such as revision of a relevant aspect of a Report, the review may be closed at this stage.

Appointment of a group of the FRRP (a "Review Group")

22. Where a review is not concluded at this stage because it appears to FRC staff that it remains the case that there is, or may be, a question whether there is a breach of the relevant accounting and reporting requirements, they will ask the CRR Committee to consider appointing a Review Group to enquire into the matter (a "Review Group enquiry").

23. In respect of Reports reviewed for the purposes of the 2004 Act, where it appears to the CRR Committee that there are matters that should be brought to the attention of the FCA, it may decide to report the matter to the Conduct Committee rather than appointing a Review Group. This may be the more appropriate course of action where a Review Group enquiry would cause disproportionate delay.

24. Where it decides to report the matter to the Conduct Committee in accordance with paragraph 23, the CRR Committee will write to the Chairman and the Chairman's previously nominated representative to inform the company of its decision. The CRR's report to the Conduct Committee will set out:
- a. the issues;
 - b. the company's explanation and/or any proposals for action; and
 - c. the recommendations of the CRR Committee.

Review Groups

25. Review Groups consist of five or more FRRP members and usually include the Chairman of the CRR Committee and one of the other members of the CRR Committee. Where the Chair is unable to chair a particular Review Group, one of the other members of the CRR Committee shall do so and the other will normally be a member of the Review Group. The Chair and other members of the CRR Committee shall constitute a minority of the Review Group. Where none of the members of the CRR Committee are able to chair a Review Group, any other Review Group member may do so.
26. Normally, every Review Group includes a lawyer in addition to representatives of the accounting profession. Where practicable, the Review Group will include members with relevant specialist or sector expertise. When asked to join a Review Group, each FRRP member shall declare any interest that could conflict, or be perceived to conflict, with their appointment to the Review Group.
27. The quorum for a meeting of the Review Group is at least half of its members. Decisions of the Review Group to write to a firm, and to report a matter to the Conduct Committee, as explained below require a two thirds majority of at least four members.
28. Where a Review Group enquiry is opened, the FRC staff will inform the Chairman of the company and any previously nominated representative, and;
- a. provide them with the details of the members of the Review Group to allow any concerns to be raised regarding conflicts of interest;
 - b. identify the relevant aspect(s) of the Report giving rise to an issue and indicate the respects in which there is, or may be, a question as to whether they comply with relevant accounting and reporting requirements;
 - c. invite comment on the matters raised; and
 - d. specify a date by which a response is required.
29. If at any time additional members are appointed to a Review Group, the company under review will be informed and be given the opportunity of raising any new concern regarding conflicts of interest.

Review Group enquiry

30. In conducting a Review Group enquiry the Review Group;

- a. will be assisted in their analysis of relevant information and representations by the company by FRC staff;
 - b. may communicate with the company at any time or ask the FRC staff to do so on their behalf;
 - c. may meet with the company at any time (and, if it does so, it will encourage the company to invite their auditors);
 - d. may seek specialist advice; and
 - e. may seek representations from a complainant or other third parties where it appears that they may have useful and relevant information to contribute to the Review Group enquiry, subject to any considerations of confidentiality.
31. If, during the course of a Review Group enquiry, the Review Group identifies a new issue in respect of which it considers that there is, or may be, a question whether there has been a breach of relevant accounting and reporting requirements, it may extend or vary the ambit of its enquiry.
32. As a result of its own consideration of the matter and/or as a result of explanations or proposals provided by the company, such as revision of a relevant aspect of a Report, the review may be closed at this stage and the Review Group will report to the CRR Committee.
33. Where it appears to the Review Group that, following its enquiry in respect of any of the company's Reports under the 2006 Act:-
- a. the company has not;
 - i. provided a satisfactory explanation of one or more matters raised or proposed appropriate action to rectify the issues; or
 - ii. revised the relevant Report(s) so as to comply with the relevant accounting and reporting requirements; and
 - b. the matter represents a breach of the relevant accounting and reporting requirements which the Conduct Committee should pursue;

the Review Group shall write to the Chairman and the Chairman's previously nominated representative. The letter will inform the company that the Review Group is minded to refer the matter to the Conduct Committee for it to decide whether to make an application to court.

34. The letter will;
- a. set out the reasons for the Review Group's views;
 - b. indicate that it is the Review Group's intention to refer the matter to the Conduct Committee;
 - c. invite the company to respond within 14 days of the date of the letter to allow it a final opportunity to meet with the Review Group or put forward representations, to explain why there has not been a breach of the relevant accounting and reporting requirements or propose action to rectify the issue(s).

35. If there is no response, or the Review Group is not satisfied by any representations or proposals put forward, the Review Group will report the matter to the Conduct Committee and will write to the Chairman and the Chairman's previously nominated representative to inform the company of its decision. The Review Group's report to the Conduct Committee will set out:
- a. the issues;
 - b. the company's explanation and/or proposals; and
 - c. the recommendations of the Review Group.
36. Where it appears to the Review Group that, following its enquiry in respect of any Reports that are required to comply with any accounting requirements imposed by the FCA rules, there are matters that should be brought to the attention of the FCA under the 2004 Act, it shall report the matter to the Conduct Committee.
37. The Review Group will write to the Chairman and the Chairman's previously nominated representative to inform the company of its decision. Its report to the Conduct Committee will set out the same matters as a report made in accordance with paragraph 35.

Conduct Committee consideration

38. Where, following consideration of a report from a Review Group in respect of any of the company's Reports under the 2006 Act, it appears to the Conduct Committee that:
- a. the company has not provided a satisfactory explanation of one or more matters raised or, so as to comply with the relevant accounting and reporting requirements, revision of one or more of the company's Reports is required; and
 - b. taking into account all the circumstances of the review an application to court is appropriate;

the Conduct Committee shall decide to apply to court.

39. Where, following consideration of a report from the CRR Committee or a Review Group in respect of any of the company's Reports required to comply with accounting requirements of the FCA rules, the Conduct Committee considers that there are matters that should be brought to the attention of the FCA under the 2004 Act, it shall decide to inform the FCA of its conclusions.
40. Where the Conduct Committee makes a decision in accordance with paragraph 38 or 39 above, it shall inform the company of its decision. Where the Conduct Committee decides to apply to court under the 2006 Act, it shall inform those other authorities it deems appropriate, such as the FCA, the Prudential Regulatory Authority ("PRA"), BEIS and the London Stock Exchange and will make a public announcement (see Part 4 below).

Voluntary revision and other proposals for rectification

41. Where, at any stage during a review, agreement is reached with the company under review that one or more of its Reports are to be rectified by way of revision, the company's directors decide whether this should be effected through full revision and reissue of the relevant Report or by way of supplementary note. The company's revision of the defective

information is monitored by FRC staff. If the company fails to carry out the revision in the manner agreed as acceptable, the review will be re-opened at the stage at which it was previously closed.

42. In some cases, alternative corrective or clarification action proposed by the directors may be accepted instead of revision of one or more of the company's Reports. For example, a corrective statement published by the company either separately or, if the timing is appropriate, in the next interim or annual report, together with an adjustment of the relevant comparative figures and notes, as appropriate and as required by legislation. What form of corrective or clarificatory action is acceptable depends on the circumstances of each individual case. The following, non-exhaustive list of factors will be taken into account:

- a. nature and effect of the defect;
- b. the need to protect users of accounts;
- c. the need to correct/prevent a false market operating;
- d. timing of the company's reporting cycle.

Reporting to the CRR Committee and Conduct Committee

43. The CRR Director will periodically update the CRR Committee in respect of reviews it is not otherwise aware of.

44. The Chair of the CRR Committee will provide an oral report to the Conduct Committee by way of update on the work of the CRR Committee not less than four times a year.

Part 3: Information gathering and handling

45. The Operating Procedures govern the terms on which the Conduct Committee, the CRR Committee, Review Groups and FRC staff receive information and how that information will be handled. Except as provided for by law, no stipulation which conflicts with them will have effect unless accepted by the Conduct Committee in writing.

Obtaining information

46. Where it appears to the Conduct Committee that there is, or may be, a question whether one or more of a company's Reports complies with the requirements of the 2006 Act (or where applicable, of Article 4 of the IAS Regulation), the Conduct Committee has the power under section 459 of the 2006 Act to require;

- a. the company;
- b. their officers, employees and auditors;
- c. any persons who fell within (b) at the time to which the document or information required relates;

to produce any document or to provide any information or explanations that it may reasonably require for the purposes of discovering whether there are grounds for an application to the court for a declaration, or deciding whether to make such an application.

47. The Conduct Committee has a similar power under section 15B of the 2004 Act where it appears to the Conduct Committee that there is, or may be, a question whether a relevant Report complies with the accounting requirements imposed by the FCA rules.

48. If a person refuses to comply with these requirements the Conduct Committee may apply to the court.

49. The Conduct Committee, the CRR Committee, Review Groups and FRC staff hope to rely on the voluntary cooperation of companies during the review process. Information will therefore usually be sought on a voluntary basis. However, if necessary, the Conduct Committee will exercise its powers under the relevant legislation. If the Conduct Committee requires information to be provided further to its statutory powers, this will be made clear in correspondence.

50. Additional information may be sought from a complainant at any point during the review process where it is thought that they may have information already in their possession that is relevant to the review. No complainant will be asked to proactively seek out information from a company.

51. Following a request or otherwise, information may be provided to the FRC by other persons for the purposes of the review process. This provision will be in accordance with the arrangements set out in legislation and any applicable memorandum of understanding ("MoU"). Current MoUs entered into by the FRC can be found on the FRC's website at <https://www.frc.org.uk/About-the-FRC/Procedures/Memorandum-of-Understanding.aspx>.

Disclosure of information

52. Any information obtained further to a Conduct Committee request under section 459 of the 2006 Act, or section 15B of the 2004 Act, is restricted from being disclosed except to the persons and/or for the purposes set out in section 461 of the 2006 or section 15D of the 2004 Act.
53. Save as specifically set out in these procedures, the Conduct Committee, the CRR Committee, Review Groups and FRC staff treat all information obtained on a voluntary basis during the review process as if it were subject to the restrictions on information received as a result of the exercise by the Conduct Committee of its statutory powers, whether or not it is subject to those restrictions as a matter of law.
54. Information obtained voluntarily during the review process may be disclosed without prior notice within the FRC for the exercise of any of the FRC's functions.
55. Information obtained voluntarily during the review process may be disclosed by FRC staff without prior notice to other persons;
 - a. where it is required by law;
 - b. where it is necessary for the purposes of their regulatory, statutory, law enforcement or prosecutorial functions, and
 - c. in accordance with the arrangements set out in any applicable MoU.
56. Information may be disclosed without prior notice to any person engaged to audit or report on the FRC or Conduct Committee's activities.
57. The identity of complainants will not normally be revealed to the relevant company. Exceptions may include occasions where:
 - a. the complainant gives permission to do so;
 - b. the complainant and their complaint is otherwise made public;
 - c. the identity of the complaint is discoverable during the Conduct Committee's pursuit of a matter to court.
58. Complainants will not normally be provided with updates during a review but will be informed of the outcome of a review to the extent consistent with any confidentiality restrictions.
59. In respect of reviews of Reports for the purposes of the 2004 Act, the FCA may be kept updated throughout a review on its progress.
60. No disclosure of information will be made if such disclosure would contravene the Data Protection Act 1998.

Storage of information

61. Papers relating to each review are filed electronically or otherwise stored securely and are retained in accordance with the FRC's Records Management Policy. Care is taken to ensure that there is no unauthorised access to such papers within the FRC office.

Part 4: Public reporting

Identification of Reports reviewed

62. The FRC will periodically publish lists of companies whose Reports have been the subject of a review, identifying whether there has been an exchange of substantive correspondence or otherwise in respect of the Reports subject of the review, and where the case has been closed.

Publication of individual reviews

63. Neither FRC staff, the CRR Committee, a Review Group nor the Conduct Committee will respond to a request to confirm or deny whether a specific review is being undertaken. However, where the Conduct Committee decides that it is in the public interest to do so, it may make an announcement that a review into a company's Report(s) is being carried out. If, following completion of the review, no further action is to be taken, a further press announcement to that effect will also be made if it is appropriate in the circumstances to do so.

64. An announcement may be made via a press notice in respect of the outcome of a particular review undertaken in accordance with these procedures where the company makes a significant change, whether corrective or clarificatory, to a Report. This is regardless of the stage at which the review is completed.

65. The press announcement summarises the accounting or legal issues in question, presents, as far as appropriate, the reasoning and approach to the reporting issue taken during the review and outlines the action taken by the company. Where possible, the press notice is issued at the same time as the company effects the corrective or clarificatory action agreed or earlier. The Conduct Committee will make an announcement on application to court for a declaration under the 2006 Act and at the conclusion of any subsequent court proceedings. The Conduct Committee may also make an announcement when it informs the FCA of any conclusions it reaches in relation to reports pursuant to the 2004 Act.

66. In other cases, if the fact of the review has become public, the Conduct Committee may consider releasing its own announcement.

67. In respect of all announcements in respect of individual reviews, the company will be given a copy of the press announcement with a minimum of 24 hours' notice in advance of making the announcement. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual accuracy. Publication will be effected by the issuing of a press announcement on the FRC's website and circulated to journalists and other parties who have signed up to receive FRC press announcements. The FRC will also circulate the press notice via social media. As applicable, the complainant will be provided with a copy of the press notice.

68. The Conduct Committee may also, without identifying the companies concerned, issue a press notice (sometimes called a 'generic' press notice) referring to one or more matters that have come to its attention and which it believes merits sharing with the financial community.

Public reporting by companies – reference to a review

69. The company may be asked to refer to its exchanges with FRC staff, the CRR Committee, the Review Group or the Conduct Committee, as applicable, when the company makes a change to a significant aspect of its reporting in its next Report in response to the review. The company should invite their comment on the reference prior to publication of the Report.
70. The Report should be clear as to the nature of the change, how the underlying issue has been resolved, and whether or not the review has been fully concluded. Where there are matters that are yet to be resolved, the company may be asked to disclose their nature and potential impact.

Public reporting by companies – Audit Committee reporting

71. Where a premium listed company's Report has been the subject of review, in accordance with the Guidance on Audit Committees, the company's Audit Committee is expected to report on a number of matters including:

-the nature and extent of interaction (if any) with the FRC's CRR team;...

72. Disclosure of CRR reviews should be factually accurate, fair and balanced in order for the market to understand and avoid the need for further public clarification. A focus of ongoing monitoring will be how audit committees report the outcomes of CRR reviews. The FRC will seek to promote clarity of reporting of findings and outcomes. The Audit Committee does not need to consult with the FRC and/or the Conduct Committee in respect of such disclosures.

Part 5: International co-operation

74. All EU national enforcers for financial information are required to comply with enforcement standards and application guidance developed by ESMA and which provide for the co-ordination of enforcement activities.
75. The FRC and/or the Conduct Committee is required to propose issues arising from individual cases for discussion at extended sessions of EECS, the forum established under ESMA standards. The FRC/the Conduct Committee only identifies the company concerned if the review has concluded and issued a press notice or the matter is otherwise public.
76. The relevant cases are filed in the database established by ESMA to assist in the harmonisation of the application of EU accounting requirements. The FRC/Conduct Committee is under a similar obligation to provide input to the Global IFRS Coordination Database under the terms of its Participation Arrangement with International Organization of Securities Commissions (IOSCO) and which is fulfilled through the ESMA publication.

Part 6: General

77. The Conduct Committee and those supporting it, where there is good reason to do so, may depart from any provision of the Operating Procedures.

Liability

78. Nothing in the Operating Procedures gives rise, or is intended to give rise, to;

- a. any legal obligation for the Conduct Committee, the CRR Committee, any Review Group or any member of the Conduct Committee, the CRR Committee or any Review Group or any member of FRC staff;
- b. any entitlement in favour of any other person; or
- c. any relationship between the Conduct Committee, the CRR Committee or any member of those Committees or any Review Group or any member of FRC staff and any other person.

79. The exemption from liability set out in section 18 of the 2004 Act, and provided for in regulations made under section 18A of the 2004 Act, applies.

Transitional arrangements

80. The provisions of the Operating Procedures will have immediate effect.

81. Any steps taken under a previous version of the Operating Procedures shall be deemed to have been taken under these procedures as approved by the Conduct Committee with effect from 1 April 2017.



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