

Inquiry Manager
Statutory Audit Services Market Investigation
Competition Commission
Victoria House
Southampton Row
London WC1B 4AD

(Submission by email to auditors@cc.gsi.gov.uk)

13 August 2013

Dear Sirs,

Statutory Audit Services Market Investigation, Provisional Decision on Remedies, 22 July 2013

The International Capital Market Association (ICMA) is responding to the above.

Paragraph 3.291 of the Provisional Decision on Remedies dated 22 July 2013 states that the Competition Commission has found some evidence of pressure to use Big 4 auditors when planning a public debt issue and that it infers from this that “public bond prospectuses may contain Big-4-only clauses”.

Where the EU Prospectus Directive applies to a prospectus for a debt issue, the name and address of the issuer’s auditors must be disclosed in the prospectus. There is also a market expectation that, even where the EU Prospectus Directive does not apply, the details of the issuer’s auditors are disclosed in the prospectus. However, ICMA is not aware of any standard or commonly-used provision in any documentation for an issue of vanilla debt securities that one of the Big 4 (or any other specific audit firm(s)) will be used by the issuer as auditor or that the issuer will retain the same auditor for the life of a bond. ICMA would welcome further engagement if the Competition Commission’s investigation indicates otherwise.

The Annex to this letter sets out some additional points of detail.

By way of background, ICMA is a unique organisation and an influential voice for the global capital market. It represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges, central banks, law firms and other professional advisers. ICMA’s market conventions and standards have been the pillars of the international debt market for over 40 years. See: www.icmagroup.org.

This response relates to ICMA’s primary market constituency that lead-manages syndicated debt securities issues throughout Europe. This constituency deliberates principally through ICMA’s Primary Market Practices Sub-committee¹, which gathers the heads and senior members of the syndicate desks of 32 ICMA member banks, and ICMA’s Legal and Documentation Sub-committee², which gathers the heads and senior members of the legal transaction management teams of 19 ICMA member banks, in each case active in lead-managing syndicated debt securities issues in Europe.

Yours faithfully,

A handwritten signature in black ink that reads "C. Bellamy".

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¹<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Primary-Market-Practices-Sub-committee/>.

²<http://www.icmagroup.org/About-ICMA/icma-councils-and-committees/Legal-and-Documentation-Sub-committee/>.

ANNEX

1. Choice of auditors in the international capital markets context

As stated above, ICMA is not aware of any standard or commonly-used provision in any documentation for an issue of debt securities that one of the Big 4 (or any other specific audit firm(s)) will be used by the issuer as auditor.

However, in the international capital market context, issuers are generally very large entities with complex, multi-national structures. Such issuers will usually select as their auditors large, multi-national (although not necessarily Big 4) firms that are able to carry out the necessary audits in the countries where the company's subsidiaries and operations are located. The alternative – use of an audit firm that has to rely on work done by other firms in jurisdictions where it does not itself have offices – is not only less efficient and potentially more costly, but also less reliable, in that divided responsibilities often lead to mistakes and contested liability. In addition, for much the same reasons, there is understandably an investor preference for a reputable (although not necessarily Big 4) audit firm, which is able to provide the adequate level of audit service to the issuer and comfort to investors.

2. Impact of rotation of auditors in the international capital markets context

The Provisional Decision on Remedies provides that FTSE 350 companies should put their statutory audit engagement out to tender at least every five years. We understand the intended purpose behind this requirement but believe that it might also have disadvantages in the context of investor protection in the international capital markets.

In order to carry out an audit, the audit firm (and each individual member of the audit team) needs to have considerable knowledge about, among other things, the company's business sector and the macro-economic environment within which it operates. During the audit process, the auditors have to obtain independently verified, detailed information about the company's business and financial position. They also have to be independent of the company. Taken together, this means that the auditors will (or should) have excellent and in-depth knowledge of all of the strengths and weaknesses of the company, which is exactly the information that forms the basis of the prospectus and that interests investors.

As a result of this, in the context of a new issue of debt (or equity), the issuer's auditors have two main functions.

The auditors will be required to provide a comfort letter to the issuer and the managers of the issuance of securities. ICMA is not aware of any requirement that such comfort letter should be given by a Big 4 firm. Indeed, the managers involved in an issue of securities will want the comfort from the firm that actually did the audit, rather than from a Big 4 firm that didn't.

The auditors also play an important role in due the diligence and disclosure process, which has the ultimate objective of achieving better disclosure in prospectuses and thus protecting consumers/investors.

It is very important to managers of bond (and particularly equity) issues that these functions are performed by the firm that carried out the audit and therefore has the in-depth audit knowledge. A less developed audit firm, in terms of skills, staffing and geographic reach, will inevitably give (in relation to the large, complex, multi-national issuers of the international capital markets) a lower degree of comfort and protection to everyone relying on the audited accounts and the prospectus. And the more often the audit firm changes due to regulatory requirements, the weaker that knowledge gets (even when the audit firms involved are in the top tier).

Auditor rotation may stop the audit relationship between auditor and company becoming less independent; however it will also result in the auditor for the time-being knowing less, and has the potential to allow companies to conceal facts more easily by changing their auditors so frequently that each audit firm does not have a chance to become sufficiently familiar with the company's affairs to identify whatever is being concealed.