DRAFT ORDER – FORMAL CONSULTATION
The Statutory Audit Services for Large Companies Market Investigation
(Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014

22 August 2014
INTRODUCTION

The ICAS Charter requires it to act primarily in the public interest, and our responses to consultations are therefore intended to place the public interest first. Our Charter also requires us to represent our members’ views and to protect their interests, but in the rare cases where these are at odds with the public interest, it is the public interest which must be paramount.

ICAS welcome the opportunity to comment on the Competition & Markets Authority (CMA) Draft Order – Formal Consultation ‘The Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014’.

Any enquiries should be addressed to James Barbour, Director, Technical Policy. (jbarbour@icas.org.uk)

Overall Comments

We are pleased that the CMA has recognised that the introduction into EU legislation of the EU Audit Regulation (No 537/2014) and EU Audit Directive (No 2014/56) constitutes a material change of circumstance to the CMA’s proposed package of remedies and has therefore given consideration as to how these can work effectively with the EU legislation.

However, we have concerns over certain aspects of the CMA’s Draft Order which we detail below.

Specific Concerns

1 Transitional Provision for Companies

Article 6.1 (c)

"where an Incumbent Auditor has been the subject of Auditor Appointments with a FTSE 350 Company in relation to less than 11 consecutive Financial Years as at 17 June 2014, Articles 3.1(a) and 4.4 shall apply in respect of Auditor Appointments made on or after 17 June 2016."

We have concerns over this proposed transitional provision which relates to those companies whose auditor has been in place for less than 11 consecutive financial years as at 17 June 2014. Whilst we welcome the CMA’s acknowledgement of the need to align its proposals with those of the EU, we have concerns that while the CMA’s approach might be viewed as a literal interpretation of Article 41(3) of the EU Audit Regulation we are aware that this is not the only plausible interpretation. We do appreciate that the UK Government is minded to take advantage of the option available to allow such companies to reappoint their existing auditor for a further period of 10 years if they are successful following an audit tender process. However, this still does not take account of the considerable costs which are incurred both by the company concerned and by the audit firms who are invited to tender and who decide to do so.

The proposed approach will mean that some of the companies that fall into the category where the auditor has been in place for less than 11 consecutive financial years as at 17 June 2014 and are still in place at 17 June 2016 will be required to retender their audit immediately. We note that article 41(3) of the EU Regulation does not specifically state when the 10 year maximum audit duration actually commences. Therefore, another possible interpretation of this Article would be to adopt a prospective approach i.e. the duration period would commence on or after 17 June 2016. This would mean that such companies would be required to rotate (or possibly to tender) their respective audits by 17 June 2026. A 12 year transitional period for such companies would appear to be more in line with the logic that has been used to set the transitional provisions for those companies where the auditor has been in situ for 11 or more years. The proportionality of the CMA’s proposed approach is therefore questionable.

We would request that the CMA reconsider this proposed approach and await developments in the EU to see whether a consistent interpretation of the legislation emerges.

With reference to provisions 4.1 and 4.2 of the Draft Order we are not convinced of the usefulness of requiring the Audit Committee, in circumstances where the company has not completed a Competitive Tender Process in relation to five consecutive Financial Years, to state in which Financial Year the company proposes that it will next complete a Competitive Tender Process. Therefore, we believe that this required statement will end up as boilerplate and add no value to the shareholders. Audit Committees will be well aware of the deadline within which the audit will need to be tendered and will choose to do so at a time which they believe is most appropriate for the company.

3 | Request for Auditor to Provide Company Information

We have concerns over article 7.2:

“7.2 The Incumbent Auditor must, where requested by the CMA, provide, within 15 working days of the request, a schedule of the following information to the CMA in relation to each FTSE 350 Company for which it is the Incumbent Auditor on the relevant date:

(a) the last Financial Year in which the FTSE 350 Company completed a Competitive Tender Process; and

(b) in relation to the Audit Committee Report published immediately prior to the relevant date:

(i) whether the FTSE 350 Company has included a statement of compliance with the provisions of this Order;

(ii) whether the Audit Committee has made a statement in accordance with the provisions in Articles 4.1 or 4.2; and

(iii) if the Audit Committee has made such a statement, the next Financial Year in which the FTSE 350 Company intends to complete a Competitive Tender Process.

7.3 For the purposes of Article 7.2, ‘relevant date’ means [1 January], beginning with [1 January 2016] and annually thereafter.”

In relation to this proposed article we believe that a request for information of this nature should be directed to the respective company secretary in the first instance and not the incumbent auditor. The administration of such matters is the responsibility of the company and not the auditor.