RESPONSE TO BEIS INITIAL CONSULTATION ON RECOMMENDATIONS BY THE COMPETITION AND MARKETS AUTHORITY IN ITS MARKET STUDY ON STATUTORY AUDIT SERVICES

To: auditmarketconsultation@beis.gov.uk

Response date: 13 September 2019

Introduction

The views set out in this response have been prepared by a Working Party of the Company Law Committee of the City of London Law Society (the "**Committee**").

The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

The Committee is made up of senior and specialist corporate lawyers from the CLLS who have a particular focus on issues relating to company law and corporate governance.

Preliminary comments

A. We comment below, as requested, in direct response to the questions posed in the Initial Consultation (omitting those on which we have no view or which are better dealt with by others). In addition, we would raise the preliminary comments set out in the paragraphs that follow.

B. We are concerned that the CMA's proposed reforms have been formulated before Sir Donald Brydon's independent review into the quality and effectiveness of audit has reported and made its own recommendations. There are undoubtedly public concerns around the effectiveness of audits following a number of well-publicised corporate failures in the last few years, but the issues that arise need to be considered holistically and not in isolation. Those issues raise the following questions: what is the purpose of an audit (is it to remain a backward looking exercise or is it to give some assurance of future viability); how is that purpose to be achieved in a competitive and efficient market; how are such audits and auditors to be regulated; and who should have the benefit of the audit (the company; its shareholders; other stakeholders)?

C. It therefore seems to us that the most logical and constructive order in which to proceed would be to -

   a. wait for the Brydon review to report,

   b. consider the findings of the CMA's Market Study and the recommendations the CMA makes against the background of Brydon's conclusions and recommendations, and

   c. decide on a regulatory regime suitable for such a reformed audit purpose and market, taking into account at that stage the findings and recommendations of the independent review of the Financial Reporting Council by Sir John Kingman. As noted in our response to the Kingman review, "any reform which introduces an enforcement regime which treats certain members of the board differently from others and holds them to different standards risks undermining the principle of collective board responsibility and thereby potentially weakening, rather than strengthening, good corporate governance". We reiterate our opposition to changing the liability regime for boards in relation to audit.

Brydon is due to report by the end of 2019. Not to wait for his review and to begin to reach conclusions on the CMA's recommendations before decisions have been made on the purpose and future of audit in our view risks confusion and the introduction of ill-considered reforms which subsequently may have to be revisited.

D. We also believe that there should be an acknowledgement that audit firms have begun to address a number of areas of concern examined by the CMA. For example, as the CMA notes, three of the Big Four firms have said that they will not carry out non-essential non-audit work for audit clients. Many audit committees have also made significant improvements in recent years in respect of the appointment and monitoring of auditors. Indeed, there is a heightened recognition among directors of both the far reaching consequences of poor quality audits and the harm that can be done to a very wide range of stakeholders as well as the reputational impact on corporate boards and individual directors as a result of audit failures. We consider that most audit committees exercise their duties carefully and diligently, focusing on the right outcomes at both the audit selection stage and throughout their engagement with the auditors.

E. Government ministers have often cited the UK's world-leading reputation for excellent corporate governance, and it is worth flagging that much of that governance regime rests on voluntary compliance on a "comply or explain" basis rather than regulation or statute. We have a general concern that more new regulation in this area may not be the best solution that is most likely to succeed in its aims. We note, in particular, that the CMA itself accepts that rules and regulations can have unintended consequences and exacerbate rather than solve existing problems (see paragraphs 3.108 to 3.112 and 3.118 to 3.123 of the CMA final report). We believe that voluntary solutions, with strong and clear guidance from regulators and the widespread publicising of examples of best practice, will often be a better and more flexible solution that can be implemented more quickly and easily adapted to meet changing circumstances.

F. The CMA Market Study is concerned mostly with FTSE 350 companies, but the BEIS Initial Consultation is not clear whether proposed reforms will apply only to the FTSE 350, to all listed companies or to some wider group which might include other Public Interest Entities (however they may come to be defined) and large private companies. We believe that any reforms that are proceeded with should start with the FTSE 350 and only be extended to a wider group once they have proved to be effective and it can be demonstrated that such other companies are in need of the same reforms.

G. We also note that the CMA's proposals do not appear to offer any solution to – and in some cases, worsen the position of - those companies seen as being "risky" who, as a consequence, struggle to find an audit firm that is both capable of carrying out their audit and willing to be appointed.

H. We have comments on two particular points made in the CMA Market Study final report —

   a. In several places the final report refers to an audit committee as "representing" the interests of shareholders (see paragraphs 3.10, 3.16, 3.67 and 3.81). An audit committee and the company's board are accountable to shareholders and they report to shareholders in a company's annual report, but it is not correct to say that they represent shareholders. No director, executive or non-executive, should be regarded as representing shareholders, either individual shareholders or shareholders as a body. The duty of all directors (under s.172, Companies Act 2006) is to act in the way they consider, in good faith, most likely to promote the success of the company for the benefit of shareholders as a whole, having regard, amongst other matters, to the stakeholder factors set out in s.172(1). It is relevant to the role of the audit committee and the CMA's proposals that these stakeholder factors include the interests of the company's employees, the need to foster business relationships with suppliers, customers and others, the desirability of the company maintaining a reputation for high standards of business conduct, and the need to act fairly between shareholders of the company. Equally, the UK Corporate Governance Code encourages boards

to engage with and obtain the views of shareholders on a range of issues. These are not, however, separate duties but simply matters to which directors should have regard when discharging their legal duty under s.172. It is this duty which should inform any proposals that are to be made in respect of audit committees. (Note also that the UK Corporate Governance Code contains no suggestion that an audit committee represents shareholders.)

b. There are numerous references in the CMA's final report to weight being given to factors such as "cultural fit" and "chemistry" when auditors are selected by an audit committee. We agree that major factors in the selection of auditors should be their independence, scepticism and challenge and that closeness to management should not be a factor, but we nonetheless believe that it is legitimate for an audit committee to seek an auditor that will have an open and transparent relationship with management and a good understanding of the business of the company and the sector in which it operates. While scepticism is a very necessary quality in an auditor, there is a risk that it can arise from a simple lack of familiarity with a particular business sector. It may be that references by audit committees to the desirability of a "cultural fit" are no more than a wish for such openness, understanding and a good knowledge of the type of business to be audited. "Cultural fit" should not be inferred as implying a lack of robustness or independence.

1. Do you agree that the new regulator should be given broad powers to mandate standards for the appointment and oversight of auditors, to monitor compliance and take remedial action? What should those powers look like and how do you think those powers would sit with the proposals in Sir John Kingman's review of the Financial Reporting Council?

1.1 We question whether more regulation is the best means of dealing with the issues identified by the CMA. Regulation can be inflexible, require legislative time, can have unintended consequences and increase bureaucracy. Instead, we think it preferable to build on the acknowledged success of the UK's corporate governance regime and for the regulator to issue guidance covering the areas of concern. Audit committees might then be required to confirm the extent to which they have complied with the guidance, and, where they have not, to explain the reasons why. The CMA acknowledges that some audit committees are effective in overseeing the activities of auditors (paragraph 5.2 of its final report) and such examples of best practice should be widely publicised by the regulator. (Indeed, in our view, many audit committees are effective in overseeing the activities of auditors, so there should be no shortage of examples.) Experience in other areas of corporate governance suggests that, with a "comply or explain" regime, reported levels of compliance are very high (because few wish to be forced to admit publicly that they do not comply) and that examples of best practice are soon adopted. We are not convinced that making standards legally enforceable necessarily leads to better or higher levels of compliance or better outcomes for relevant stakeholders.

1.2 It is also a reality that once standards are committed to legislation or regulation they will tend to be interpreted on a conservative basis. As a result, audit committees and their advisers will be cautious in ensuring that there can be no suggestion that they are in breach. As a consequence, the pool of available independent, conflict-free auditors from which an audit committee can (or is willing to) chose a high quality auditor may be reduced even further and the aim of increased competition not be achieved.

1.3 In any event, paragraph 5.3 of the final report acknowledges that there is some overlap between existing regulation and codes and any likely new standards, but concludes that what is needed is a set of enforcement powers which do not exist in the current governance framework. We are sceptical that new enforcement powers are needed or will achieve better levels of compliance or better outcomes for relevant stakeholders. Rather, we believe that these goals are more likely to be achieved by

better guidance to audit committees on how to comply with existing standards and greater use of best practice examples.

1.4 If the regulator is to be given new powers, we are concerned at the vagueness of the proposals from the CMA, both as to the minimum standards for the appointment and oversight of auditors and for monitoring compliance with the standards and taking remedial action where necessary. No detail is given as to what those powers might be. Once detailed proposals have been developed, they should be subject to further public consultation.

1.5 Any new powers given to the regulator should be proportionate and consistent with other relevant regimes. We are concerned that if the enacted proposals go much beyond the current scope of regulation and practice in other comparable regimes, the attractiveness of the UK as a place to do business may be adversely affected.

1.6 We are also concerned at the size of the task that might be given to the regulator, the requirement for skilled staff at the regulator to apply the new regulations and to monitor compliance, and the associated cost. Thought needs to be given to where these resources are to come from and the availability of sufficient resource (monetary or personnel) within companies (particularly smaller ones) to comply with extensive new regulation.

1.7 We do not believe it is necessary or desirable for the regulator to have the right to place an observer on an audit committee. In practice, the presence of an outsider, particularly one from a regulator, is likely to have an artificial and potentially chilling effect on any meeting and will not necessarily give the observer a true understanding of the committee, its members or the business it is transacting. The presence of the regulator is in practice likely to inhibit a full and frank exchange of views which will always be an important necessity for an audit committee, particularly when it is meeting the company's auditors, and may result in a "tick box" mentality and approach. An observer is also unlikely to have sufficient information on the company's business and audit process, including past audit decisions, to be able to make a worthwhile assessment of the committee. We are not clear, in any event, what powers it is intended the observer or regulator would have as a consequence of an adverse assessment. We believe the objective of overseeing how an audit committee appoints an auditor may be achieved through the CMA's proposals for transparency of audit tenders and appointments. If further intervention is deemed necessary, rather than placing an observer on the board, a better option would be to increase contact between the regulator and an audit chair so that the regulator has a direct means of receiving relevant information from the committee and of communicating to the committee its concerns, advice and guidance. In addition, the regulator could retain the option of requiring a meeting with a proposed lead audit partner prior to appointment.

1.8 We believe that any practice whereby the regulator writes direct to a company's shareholders should be used with great caution. The regulator should first communicate direct with the company which is the object of its regulation and, in extreme cases, where failings have not been taken onboard and resolved and after due warning, the regulator may make those communications public (subject, where appropriate, to necessary confidentiality considerations). It is then for shareholders to hold directors accountable for their actions and omissions. The regulator should not, save in rare cases (such as when a company has failed to fulfil its obligations to pass information to its shareholders) seek to circumvent these normal lines of accountability. Regulators need, in any event, to be mindful of the interests of all investors and other stakeholders in the audit process and if there are concerns that merit being addressed in this way, then this would be better done through a public intervention rather than by writing just to shareholders or only certain shareholders. Note also that shareholders may need a means to raise concerns with the regulator as a last resort, where engagement with the audit committee and board has not worked. See also our comments in response to question 3 below (in particular, paragraph 3.4).

2. What comments do you have on the ways the regulator should exercise these new powers?

- **For instance, do you have any comments on the conditions that should be met for the regulator to exercise its powers to take remedial action?**

- **Are there particular events (such as a poor audit quality review, early departure of an auditor or a significant restatement of the company's accounts) which should trigger the regulator's involvement?**

2.1 The regulator's criteria for when it will take remedial action should be made public at the time it is granted any such powers. We believe that such powers should be used sparingly and proportionately, having given the company concerned reasonable opportunity for compliance and after due warning as to the consequences.

2.2 We agree that the particular events stated in the question might trigger the regulator's involvement, but there may be other equally serious events that, as a practical matter, would have a comparable effect on confidence in the company's reporting. We note that Kingman's suggestion that the regulator should be able to pre-clear the treatment of potentially contentious issues may reduce the need for any subsequent regulatory intervention.

2.3 See also our comments in paragraphs 1.5 and 1.8 above.

3. **How should the regulator engage shareholders in monitoring compliance and taking remedial action?**

3.1 Although the CMA final report refers to the concerns of shareholders as to the effectiveness of audit committees, our understanding is that when some companies seek to engage with major shareholders they can find it difficult to elicit a response. The CMA acknowledges (paragraph 3.67) that "most stakeholders we spoke to suggested that investors have little engagement with audit matters". The reality is that most investors lack the internal resource for such engagement and do not give it sufficient priority over other demands.

3.2 The work of the Investor Forum is a notable exception to this lack of engagement and the Forum's annual reports disclose some success stories. Where the regulator has successfully engaged with an audit committee, the regulator might give details of that engagement in its own annual report (subject to confidentiality concerns) in order to bring transparency to its work and to encourage similar cooperation.

3.3 We believe this is principally a matter of good investor stewardship and should be left to the various initiatives already in train to improve investor engagement.

3.4 As noted above in paragraph 1.8, we do not believe the regulator should be engaging directly with shareholders, save in the most extreme cases. If the regulator is to contact shareholders it should ensure that it treats all shareholders equally and does not communicate only with certain large or influential investors. It will also need to take great care not to communicate price-sensitive information with the attendant risks of market abuse.

4. What would be the most cost-effective option for enabling greater regulatory oversight of audit committees? Please provide evidence where possible.

4.1 We do not believe that cost-effectiveness should be the overriding factor in deciding the nature of regulatory oversight of audit committees. That said, we believe the most cost-effective means of increasing the effectiveness of audit committees is better guidance and more examples of good practice and potentially a "comply or explain" regime, rather than more mandatory regulation. See our comments in paragraphs 1.1 to 1.3 above. As noted in 1.7 above, we also believe the objective of overseeing how an audit committee appoints an auditor may be achieved through the CMA's proposals for transparency of audit tenders and appointments.

5. Do you agree with the CMA's joint audit proposal as developed since its interim study in December?

5.1 We are sceptical that the CMA's joint audit proposal will be an efficient or effective solution to the problems identified by the CMA. In its first recommendation (on audit committee scrutiny) the CMA is clear that its overriding aim is to achieve high quality audits. We agree with that aim. In its second recommendation (for joint audit) the CMA says its aim is to improve the resilience of the audit market and that increasing the number of credible audit firms will lead to stronger competition "leading ultimately to better audit quality" (paragraph 6.10). We believe that high quality audits should remain the pre-eminent aim of all of these reforms and not just something that might "ultimately" be achieved.

5.2 The CMA's final report (paragraph 6.12) summarises the views of those who believe joint audits do present a risk to audit quality and we find those views convincing. We note that the CMA does not accept that those risks are significant. We would nonetheless argue that if there is any material risk to audit quality that risk should be avoided. The aims of improving the resilience of the audit market and achieving stronger competition must be achieved by other means that do not risk audit quality.

5.3 We are also concerned that the joint audit proposal seems to have garnered very little support from those who will need to implement it. Paragraph 6.12 of the CMA final report notes that opposition or reservations were expressed by the Big Four firms, one of the main challenger firms (BDO), the 100 Group of FTSE 100 finance directors, and by audit committee chairs. Such a major reform should only go ahead if there is a reasonable consensus amongst the parties involved that it can be made to work and to achieve its aims.

5.4 One flaw we see in the proposal is that it will not achieve its aim of introducing challenger firms to more complex audits (and so prepare them to take on such audits in competition with the Big Four) because the CMA's proposal is that the most complex audits will be excluded from the requirement for a joint audit. That seems to us to be illogical and an admission that the proposal is unlikely to work — if a challenger firm is not capable of participating in a joint audit of a very complex company, why is it thought capable of participating in a joint audit, signing a joint audit report and taking responsibility for the whole of the audit of a company which may be only slightly less complex. How is that artificial distinction to be made on an objective basis – size, geography, nature of business activity? Although we would question whether size and/or geographic spread necessarily equate to complexity, these factors may bring their own challenges. If a challenger firm can be schooled in the complexities of an audit for a company that is, say, towards the bottom of the FTSE 350, why can it not also be schooled in the complexities of an audit at the top of the FTSE 100. If it is not capable of the latter, will it be capable of the former?

5.5 We note from the CMA report (paragraph 6.49) that 44% of French companies in the SBF 120 are audited by two Big Four firms rather than by a Big Four firm and a challenger firm. The CMA's proposal that <u>all</u> FTSE 350 companies undergoing a joint audit should use a challenger firm is not supported by the French experience. We are also not aware of any evidence suggesting that either audit quality or competition amongst audit firms is materially better in France than in the UK (the audit market in France being dominated largely by the Big Four plus Mazars).

5.6 Our conclusion is that audit committees (and shareholders) should be left to select the auditor they believe best able to deliver a high quality audit. They should not be shackled in achieving that aim by being forced to appoint joint auditors as part of an education exercise to improve audit competition in the future. It is inconsistent on the one hand to seek to impose more regulation on audit committees with the aim of achieving higher quality audits, but on the other to prevent them from appointing the auditor or auditors they believe can best deliver that quality.

5.7 We also have some practical questions -

5.7.1 Is there any assurance that the challenger firms will have the resources to participate in these joint audits? Will they be able to recruit the necessary personnel and/or provide the necessary geographical coverage?

5.7.2 What will happen if the two joint audit firms cannot agree on an issue? No mention is made in the proposal of any means of resolving a disagreement which would delay the signing of the audit report and so the publication and filing of the accounts.

5.7.3 Will a Big Four firm and challenger firm be allowed to team up and respond to an audit tender as a part of a single proposal? Will the same two firms be allowed to do that on a regular basis (no doubt arguing that they are a proven team that can work well together)? If so, will that not turn the Big Four into the Big Four each with its tied challenger firm, and will that not reduce the likelihood of greater competition?

5.7.4 Some large companies take up to two years to transition from one auditor to another. If the two firms engaged in a joint audit are to be appointed and retire at different times, there is a risk of a company being in a constant state of flux with its audit. Would that not pose a challenge to audit quality?

5.7.5 How will overseas companies be affected by this proposal — for example, companies within the FTSE 350 that are incorporated outside the UK which will have their own jurisdiction's requirements as to audit, and overseas subsidiaries of a UK parent that are included within a group audit of consolidated accounts?

5.8 We believe that, rather than impose joint audits on all (or most of) the FTSE 350 as a blanket answer to a competition problem, a better proposal would be to use peer reviews targeted on particular companies where there are doubts about the efficacy or quality of a particular audit. In addition, every FTSE 350 company might be required to undergo a peer review on a periodic basis (say, every five years). Such reviews would ensure high quality audits and, if carried out by a capable challenger firm, would also serve the CMA's purpose of providing experience of more complex audit issues. (See our additional comments on peer reviews in paragraph 13.4 below.)

5.9 See also our comments on auditor liability in response to question 8.

6. Do you agree with the CMA's proposed exemptions to the joint audit proposals? How should the regulator decide whether a company should qualify for the proposed exemption for complex companies?

6.1 If the joint audit proposal were to proceed with its aim of widening competition, we agree that it should not apply to a FTSE 350 company that has selected a challenger firm as a sole auditor. As explained in paragraph 5.4 above, we do not think the exemption for complex audits is logical. If that were to remain in the proposal, we think the regulator would need to be very clear as to its criteria for deciding that a company is to be exempt and for maintaining that exemption. We fear the regulator may be inundated with applications from companies for an exemption.

7. Do you agree that challenger firms currently have capacity to provide joint audit services to the FTSE350? If a staged approach were needed, how should the regulator make it work most effectively? If not immediately, how quickly could challenger firms build sufficient capacity for joint audit to be practised across the whole of the FTSE350?

7.1 We do not comment on whether challenger firms currently have capacity to provide joint audit services to the FTSE 350, nor how quickly they could build sufficient capacity.

7.2 We are not clear whether the question about a staged approach relates to joint audits only being required when an audit is next put out to tender (with which we agree), or

whether it refers to the two firms being appointed and retiring at different times (which we think should not be prescribed but left to the audit firms and the company to decide).

8. Do you agree with the CMA's recommendation that the liability regime would not need to be amended if the joint audit proposal were implemented?

8.1 We agree that, if firms are to be jointly responsible for an audit report, there should be joint and several liability for the two firms. We note, however, that auditor liability is one of the issues to be examined and reported on by the Brydon review which we believe is another reason why the question of joint audit should not be decided before Brydon has reported and his conclusions have been considered.

8.2 We are not clear exactly how the CMA envisages joint and several liability for joint auditors would work in practice and so we find it difficult to answer this question conclusively. In particular —

8.2.1 will the two firms be allowed to conclude in advance a contribution agreement, apportioning liability between themselves in whatever way they agree?

8.2.2 have insurers been approached as to the likely cost of insuring a joint audit of a FTSE 100 or 250 company for a challenger firm? Is that a cost that the challenger firms are willing and able to bear? Recent press reports suggest that insurance costs are increasing and are an increasingly large overhead for audit firms. (We note from the CMA final report (paragraph 6.61) that most firms argued for proportionate liability as opposed to joint and several liability.)

8.2.3 has the CMA looked at insurance arrangements in France for joint audits (where we understand audit firm insurance arrangements are different from those in the UK)?

8.3 In the absence of reform of auditor liability, we believe there is a strong risk that the cost and complexity of joint audits will be significantly more than the CMA seems to anticipate. Liability limitation agreements are hardly ever used and even the CMA seems pessimistic that this will change when it says (paragraph 6.66 of its final report) that "it is not inconceivable that the introduction of joint audit may lead to firms and shareholders taking a different view". Note also that FTSE 350 companies with shares registered in the US would be subject to the view of the Securities and Exchange Commission that limitation of liability is inconsistent with auditor independence.

9. Do you have any suggestions for how a joint audit could be carried out most efficiently?

We have no comment.

10. The academic literature cited in the CMA's report suggests the joint audit proposal would lead to an increased cost of 25-50%. Do you agree with this estimate?

We have no comment.

11. Do you agree with the CMA's assessment of the alternatives to joint audit, including shared audit?

11.1 As indicated in paragraph 5.8 above, we believe that a targeted peer review is a preferable alternative to joint audits.

11.2 In our view, a market share cap on audits would not really be a practical solution as, among other things, it may lead to a reduction in competition and choice for some companies during the auditor selection period if an audit firm is at its capped limit.

12. How strongly will the CMA's proposals improve competition in the wider audit market, and are there any additional measures needed to ensure that those impacts are maximised?

12.1 As explained in paragraph 5.1 above, we believe that audit quality should be the pre-eminent aim of any reforms in priority to improved competition. We are, in any event, sceptical that the joint audit proposal will achieve improved competition. The CMA says it will take ten years for all FTSE 350 companies (other than those that are exempt) to have a joint audit, and additional time is then needed for those joint audits to give the challenger firms the experience they need to bid for sole audits within the FTSE 350. We believe the CMA's aims are more likely to be achieved by other means such as investment in challenger firms to give them the capacity and resource to bid successfully for larger audits and to ensure that such audits are of high quality, particularly in a regime of increased scrutiny and accountability of audit committees.

12.2 We also note that the Kingman review (paragraph 6.4) acknowledges that only six audit firms are subject to annual FRC review under the FRC's Audit Quality Review programme. Kingman adds that "the lack of regular external reports on other auditors can have the effect of limiting choice for audit committees who will want to play safe and only include auditors on shortlists where they have satisfactory current reports. The FRC's recent decision to enhance reviews for the six largest audit firms may have a similar effect in entrenching the incumbents because audit committees may only want to pick firms where the FRC has validated their processes." Competition will improve when audit committees can be assured of the quality of audits by challenger firms. Those firms and the regulator should therefore make every effort to attain the highest quality standards for audit work.

13. Do you agree with the CMA's proposals for peer review? How should the regulator select which companies to review?

13.1 See our response in paragraph 5.8 above.

13.2 If the joint audit proposal proceeds, we agree that those companies that are exempt on the grounds of complexity should be subject to a peer review. We agree that they should be chosen both on the basis of rotation and on the basis of risk.

13.3 We do not agree that the peer reviewer should have to be a challenger firm in all cases. It again seems illogical to accept that a challenger firm cannot conduct even a joint audit of a very complex business but it can, on its own, carry out a peer review of such an audit. We note that paragraph 6.78 of the CMA final report says that the key objective of peer review is to improve audit quality, but goes on to say that excluding Big Four firms from such a review will allow challenger firms to gain additional experience. We believe that these proposals should aim at high quality audits and not risk diluting that goal by using the reforms to give challenger firms exposure to more complex audits.

13.4 Before the proposals for peer review proceed, questions as to the scope of the review, to whom the reviewer owes responsibility and who pays for the review need to be considered and consulted upon. A peer review may also have implications on the timing of the release of audited results and related announcements, with consequent uncertainty and delay. Any such delay would also raise issues relating to the relevant company's ability to comply with applicable disclosure obligations (for example, pursuant to the Market Abuse Regulation).

14. Are any further measures needed to ensure that the statutory audit market remains open to wider competition in the long term?

We have no comment.

15. What factors do you think the regulator should take into account when considering action in the case of a distressed statutory audit practice?

We have no comment.

16. What powers of intervention do you think the regulator should have in those circumstances, and what should be their duties in exercising them?

16.1 We are concerned at any suggestion that, following the collapse of a Big Four firm, an audit committee might in some way be restricted from choosing the audit firm it believes will deliver the best quality audit. The regulator should not have the power to intervene and direct an audit committee (or a company's shareholders) to select a challenger firm rather than one of the remaining members of the Big Four. To allow such an intervention will be inconsistent with the obligation placed on an audit committee to ensure a high quality audit and prejudicial to the interests of shareholders and other stakeholders.

17. Do you agree with the CMA's analysis of the impacts on audit quality that arise from the tensions it identifies between audit and non-audit services?

We have no comment.

18. What are your views on the manner and design of the operational split recommended by the CMA? What are your views on the overall market impact of such measures?

We have no comment

19. Are there alternative or additional measures which would meet these concerns more effectively or produce a better market outcome?

We have no comment.

20. Do you agree with the CMA's proposal to keep a full structural separation in reserve as a future measure?

We have no comment.

21. What implementation considerations should Government take into account when considering the operational split recommendations? Please provide reasoning and evidence where possible.

We have no comment.

22. Do you agree with the CMA's other possible measures? How would these suggestions interact with the main recommendations? How would these additional proposals impact on the market?

We have no comment.

23. Do you agree with the CMA's suggestions regarding remuneration deferral and clawback?

We have no comment.

24. How would a deferral and clawback mechanism work under a Limited Liability Partnership structure?

We have no comment.

25. Do you agree that liberalising the ownership rules for audit firms would reduce barriers for challengers and entrants to the market?

- **What positive and negative impacts would this have?**

- **Do you have any specific proposals for a reformed ownership regime?**

We have no comment other than to note that greater scope for investment in challenger firms might help give them the resources to compete more effectively in audit tender processes.

26. Do you agree with the CMA's suggestions regarding technology licensing?

- **What changes would you like to see made to the current licensing framework?**

We have no comment.

27. Do you agree with the CMA's suggestions to provide additional information for shareholders? Do you have any observations on the impact of the Public Company Accounting Oversight Board's database on the US audit market?

27.1 See our comments in paragraphs 1.8 and 3.1 to 3.4 above. Communications to a company's shareholders should come from the company, not the regulator. The regulator should communicate direct with the company, not its shareholders, save in exceptional cases where the company has failed to fulfil its obligations to pass information to its shareholders.

28. Do you agree with the CMA's suggestions regarding notice periods and non-compete clauses? Do you agree that the regulator should consider whether Big Four firms should be required to limit notice periods to 6 months?

We have no comment.

29. Do you agree with the CMA's suggestions regarding tendering and rotation periods?

29.1 We agree that tendering and rotation periods should remain at, respectively 10 and 20 years.

30. Do you have other proposals for measures to increase competition and choice in the audit market that the CMA has not considered? Please specify whether these would be alternatives or additional to some or all of the CMA's proposals, and whether these could be taken forward prior to primary legislation.

We have no comment.

31. What actions could audit firms take on a voluntary basis to address some or all of the CMA's concerns?

We have no comment.

32. Is there anything else the Government should consider in deciding how to take forward the CMA's findings and recommendations?

32.1 See our preliminary comments B to H above.