



18 February 2011

Michael Mackay
Legal Services Board
7th Floor,
Victoria House
Southampton Row
London WC1B 4AD

Dear Michael

Further rules relating to the regulation of licensed bodies

Please find attached, ICAEW's response to your consultation paper on rules concerning the notification of changes to the holding of interests in, registers of, and ownership of licensed bodies.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

A handwritten signature in black ink that reads 'Tracy Stanhope'.

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ICAEW REPRESENTATION

Memorandum of comment submitted in February 2011 by the ICAEW, in response to Legal Services Board consultation paper on rules concerning the notification of changes to the holding of interests in, registers of, and ownership of licensed bodies.

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the *consultation paper* on rules concerning the notification of changes to the holding of interests in, registers of, and ownership of licensed bodies.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

3. ICAEW is approved by the Department for Business, Innovation and Skills as:

- a Recognised Supervisory Body (RSB) for the supervision of auditors; and
- a Recognised Professional Body (RPB) for insolvency practice;
- a Recognised Qualifying Body (RQB) for the awarding of audit qualifications

and has been designated by the Treasury as:

- a Designated Professional Body (DPB) for investment business under the supervision of the Financial Services Authority (FSA)
- a supervisory authority for money laundering under the Money Laundering Regulations 2007.

4. Our membership includes numerous audit committee chairs, finance directors and members involved in investment management activities as well as auditors. Members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.

RESPONSES TO SPECIFIC QUESTIONS

1. What do you think of the proposed information to be held on the register?

We are not convinced that all the information listed in the consultation document is necessary or proportionate.

The register should be able to identify the licensed body, provide contact details – address, telephone number, website and details of a named individual to contact, details of the licensing authority, and the activities the body is able to undertake.

Looking at that information we consider unnecessary, firstly, we do not see the need for details of revoked or suspended licences to be listed. It should be sufficient that there is no register entry for a body to demonstrate that it is unlicensed. We cannot think of any other register (with the exception of the Companies House register of companies) where those formerly registered remain on that register. In practical terms if a licensed body is never to be removed from the register it will become unwieldy and difficult to search.

Similarly, we see no need for the register to contain details of any enforcement action or sanction imposed on the body, its owners or staff. If a body meets the criteria to be licensed that should be sufficient. Reliance should be placed on the licensing authorities to ensure that only those fit to be so are licensed.

We see no real benefit in naming the head of legal practice and the head of finance. These are not necessarily terms with which the public are familiar and it should be sufficient that they are provided with details of a named contact at the licensed body. The same applies to the beneficial owners, we can think of no circumstance where it would be helpful for someone searching the register to know who the ultimate owners of the licensed body are. This is another area where reliance should be placed on the licensing bodies to ensure that a licensed body meets the

ownership criteria.

2. Do you think any other information should be held?

No as regards additional information, but we do consider that there is a considerable gap in the law in that there are no equivalent requirements for approved regulators to maintain a register of authorised persons. Again, from the public interest perspective of improving access to justice, if they are searching for a provider of a particular reserved legal service, they will not find all providers listed in a register of licensed bodies.

3. Do you think that the registers should be publicly available on the LA's websites?

We would suggest that instead a combined register is held on the LSB's own website only, with the information therein being provided by the LAs. We do not believe that it would be appropriate for a member of the public to have to search on a number of bodies' websites to verify whether and by whom a body is licensed and can think of no other system of regulation where there is no one central register. Additionally, as it is the LSB that will provide the register of disqualified persons it would seem sensible that that register sits alongside the main register of licensed bodies. Our suggestion would be that the LAs simply link from their own websites to a register provided by the LSB. This would still comply with rule 6 of the draft rules.

Joint registers are used for the public audit register and the FSA's register of firms licensed under the designated body arrangements. Many of the likely licensing bodies will be familiar with one or both of those registers.

4. Do you think that information on the register should be updated in the times suggested?

You will note from our response to Q3 that we believe that there should be a single register maintained by the LSB. We would have no difficulty in providing information to the LSB within 28 calendar days, though our preference would always be for time periods to be expressed in business days. Our committee meetings and disciplinary hearings will be held on business days and our regulations generally are drafted on the basis of business days. We work in a business environment and will usually be contacting people at a business address. However, this requirement is not included in the draft rules and there is no equivalent requirement on licensed bodies to update the licensing authority on changes.

5. Do you have any views on the rules as they are drafted?

It would be helpful if the rules described the obligations in the various paragraphs of Schedule 13 rather than simply listing the paragraph numbers. This would be helpful to readers unfamiliar with the content of Schedule 13. You have noted this information in paragraph 39 of the consultation document, so it would seem sensible to copy this information into the draft rules. Also, the rules are merely a list of information to be displayed. Regulations made under s1240 of the Companies Act 2006 specify the manner in which the information may be searched.

Lists of disqualified persons

6. What do you think about the requirement on LAs to notify the LSB of disqualification determinations within 7 calendar days?

Our preference would be that all time periods are expressed a business days – see our response to Q4 – and that an appropriate time period is 10 business days. We would wish that any requirement makes it clear that the clock starts ticking when any period for appeal has expired. It would be inappropriate to have details entered into a register when an appeal against the decision was ongoing or the time period for making an appeal had not expired.

7. What do you think of the proposed details to be held on the list of disqualified persons?

8. Is it a proportionate amount of information to provide?

Our answer here is in response to both questions 7 & 8.

The information listed exceeds that provided for disqualified directors and we are unsure why additional information should be necessary. The information provided should be sufficient to identify the individual -name (including any aliases), address and date of birth. The remaining information should relate to the disqualification itself - the start date, duration and effect of the order, brief details of the misconduct leading to the disqualification, and the licensing body which has imposed the order. It is unlikely that a searcher of the register would have details of any licence or practising certificate held by a disqualified person and in cases of doubt they could always contact the licensing body to verify the identity of the person listed.

9. What do you think of our publication proposals?

If there is to be a register of such disqualifications, then it should be publicly available and searchable.

10. What is your view on our approach to the list held under schedule 13 paragraph 51?

We can see no real benefit in making such a list public and do not understand what benefit the public would derive from having this information. The rules about ownership in Schedule 13 are some of the least accessible in the Act, and probably the most capable of being misunderstood. You will be making public information that for most of the public is very difficult to understand but at the same time may imply that those listed have committed some unspecified wrong. It does not necessarily make someone a “bad” person in other respects if they have restricted ownership of an ASB. We would suggest that this information simply be shared amongst the licensing bodies.

Notification periods under schedule 13

11. What do you think about our approach to specifying the periods in schedule 13 and the draft order? If you wish to provide an alternative approach or specific periods, please provide supporting evidence to justify this.

We think that however the limits are specified it should be clear to those affected that there is a limit and of the consequences of failing to adhere to that limit. Although it is a common and sensible legislative mechanism to leave administrative detail to be included in secondary legislation, the penalty (offence) is included in the primary legislation, so the requirement and the penalty are in two different places. Care will need to be taken that applicants are aware of the consequences of the failure to comply by both the LSB and the LAs. We assume that there will be some sort of reporting obligation imposed on the LAs to report a breach for which there is a legislative sanction.

12. What do you think of the proposed 7 day period for notification prior to issuing of licences?

We understand the motivation behind the proposed time period. However, a LA is likely to want to consider any such application afresh if the changes in ownership are so significant that notification is required. Or depending on when during the application process a notification is received it may mean that the licence may have to be withdrawn. Informing the LA within 7 days could still mean that a licence has been granted before the notification is received by the LA.

Most LAs (and applicants) will wish to avoid this kind of situation and will build into the application process forms of undertaking from the applicant that the ownership structure will comply with the LA's criteria. If an applicant is aware that a change in ownership may cause the revocation of a licence or a delay in the process they will most likely take steps to ensure that no changes are made to their structure during the licensing process. Many applicants will be established

businesses so changes to ownership will not happen in an unplanned way.

13. What do you think of the proposed 7 day period for notification where the ownership changes?

You will have noted our comments earlier about the use of business days – see our response to Q3. Given your example of an inheritance, a period of 7 days seems somewhat short, even if that period commences on becoming aware. A 7 day period only really works for a well informed investor with knowledge of the business, who knows that the interest acquired is an interest in a licensed body and that the interest is restricted and so must be notified. Our view is that the requirement at the end of paragraph c of the statutory instrument should be ‘...first becomes aware of the acquisition of a restricted interest that is to be notified’. The formulation used at the end of paragraph d may be a better formulation – ‘first becomes aware of the facts that give rise to the duty to notify’.

14. What do you think of the 28 day period for notification if a limit has been exceeded?

As these limits may be set by the LAs in their rules, we would suggest that the period for notification be set by the LAs themselves. Most authorisation systems currently operated by LAs will include provision to notify the LA of changes which may affect the status of an authorisation. There is no absolute requirement on the LSB to prescribe a period.

Ownership of licensed bodies: Schedule 13 – prescribed rules

15. What are your views on the time periods that we have proposed?

See our response to question 6 about the drafting of this statutory instrument. Actions by LAs – we are content with the proposed 90 period.

Actions by investors - we would question whether there is a need for the LSB to prescribe periods in circumstances where there is no threat to confidence in the regulatory framework as is suggested in relation to paragraph 10(2). In other circumstances we would suggest that the LAs set their own limits within their licensing rules. In any event, the provision in rule 6 of in all other cases the period is 28 days, conflicts with the statutory instrument in relation to where the notification period is different. Therefore we suggest that rule 6 does list the various paragraphs of schedule 13 as rule 5 does.

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