AT/BPC

By email: remcon@frc.org.uk

6 December 2013

Dear Ms Woods,

ICAS response to the Consultation Paper: Directors Pay

The Institute of Chartered Accountants of Scotland (ICAS) welcomes the opportunity to comment on this FRC consultation paper (CP). 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.

Our key messages

ICAS are supportive of the concept of clawback adoption. Moving from 'consideration' to a 'comply or explain' basis does not seem to be a big step and appears sensible. It is also reasonable to adopt the same terminology as used in the relevant Regulations to cover both the recovery of sums paid and the withholding of sums to be paid. In our view it is likely to be difficult specifying the detail of each and every circumstance under which amounts could be recovered or withheld so a sufficiently well-worded general description of the circumstances in which clawback may arise would work best.

In terms of practical considerations, companies would need to review service contracts to ensure that they provide for clawback. Boards would also need to be able to apply some pragmatism around a timescale for repayment. For instance, if an executive has already spent a cash bonus that he received in good faith, then one would have to have some flexibility as to how that money might best be recovered from the executive over a reasonable time-frame. Perhaps a time bar could also be considered (say 3 years) to keep within reasonable limits.

We are not convinced there is a case for excluding serving executives from sitting as non-executive directors (NEDs) on other listed Boards. The data shows not only a decline in the numbers of serving executives that now sit as NEDs on other Boards compared to ten years ago, but also that there is no evidence that where this happens there is any greater level of shareholder dissent over remuneration issues. Indeed, the experience that their executive role brings can add an additional valuable perspective to discussions. In practice excluding executive directors would also bring significant transitional problems.

We are not convinced of the need to change current practice regarding votes against the remuneration resolution. Guidelines have already been set and there would a risk of becoming too prescriptive. There is not sufficient justification why one should make a special exception for voting outcomes of remuneration resolutions above all other resolutions that get a significant level of votes against. There are also practical difficulties in terms of defining what represents a "significant percentage". The relative "significance" of, say, a 25% vote against will vary from company to company depending on the shape of their shareholder register. For instance, a company with a single dissenting 25% shareholder would be required to explain but one with 12 individual dissenting shareholders each holding 2% would not.

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The new Regulations require an explanation in the annual Remuneration Report where there is a significant percentage of votes against a resolution and this, we believe, should be sufficient.

Yours sincerely

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