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Mr Lee Vasey
Policy Advisor - Corporate Governance
Department for Business, Innovation and Skills
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5 April 2013

Dear Mr Vasey

Draft Statutory Instrument on Directors' Remuneration: the Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Corporate Governance and Share Schemes Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to this consultation. In summary, we are surprised by some of the changes to the final regulations. We believe some will be particularly unhelpful for small and mid-size listed companies. These include:

- **Increase in the size of the legislation**

  The latest draft has 55 paragraphs contrasted with 22 in the 2008 regulations and 38 in last June's draft. We believe that this could lead to longer reports by companies, which are less helpful to investors and filled with boilerplate disclosure. It appears that the revised draft tries to legislate for everything in order to make remuneration reports clearer – and as a result will make them less clear.

- **Scenario Charts**

  The Scenario Charts ignore share price growth. It implies a total scenario figure definition which is different from that of the historical 'single figure of total remuneration'. The single figure rightly includes share price appreciation – price growth (and any accrued dividends) as part of the reward at the point of vesting.

Share price growth is a fundamental part of performance. We support MM&K's detailed comments on this.

- **Change to the commencement provisions**

  We should also note that we remain disappointed that late last year a change was made to the underlying primary legislation putting September year end companies into the first wave of companies affected by this regime rather than in the last wave as they had expected from the first draft of the legislation (when they would be able to draw on other companies' reports and experience and so approach this more cost effectively). This has caused affected companies considerable inconvenience and is prime example of why legislation needs to be precisely drafted from the outset, and, where it is not, the Government accepts that companies should not be penalised for its drafting errors.

- **Exemption of small and mid-size listed companies**

  As we noted in our previous consultation responses on these remuneration regulations, we believe there is not significant evidence to suggest that there is a problem with excessive remuneration and company and investor engagement on remuneration within small and mid-size listed company sector. It is our view that these requirements should not extend to them. We are therefore of the opinion that the Government should limit the application of these rules to the largest listed companies, for example, to companies within the FTSE 350. This will enable companies to know at the start of the reporting year whether they are subject to these rules for that year. Alternatively, a threshold based on an average market capitalisation over the previous three years could be used.

We also have some general comments on the drafting:

- **Single total figure of remuneration for each director**

  Part 3, Paragraph 3(2) is not drafted clearly. In the next year do companies continue with the estimate as a deemed actual or should they restate the comparative to the actual?

- **Payments to former directors (Part 3, paragraph 15)**

  The requirement to report "any money or other assets (other than payments reported under paragraph 16) made in the relevant financial year…" paid to former directors. We believe that this requirement needs to be refined to avoid the need to report small payments made in respect of, for example, healthcare plans or payments made in respect of shares held by former directors, such as dividend payments.

- **Publication of targets (Part 3, paragraph 16(1) and Part 4, paragraph 27)**

  Whilst it is normal practice to provide some indication of the measures against which performance will be assessed, the requirement to report "details of the performance targets" whether for the next year or for future years will, in our view, inevitably be detrimental to the interests of the company, as it will provide guidance, at an early stage, as to what the performance of the company is likely to be. Furthermore, and especially in the small and mid-size listed company sector,

strategic imperatives and the associated performance targets are likely to change in the short to medium term. We do not believe that the 'safe harbour' in respect of disclosures that would be "seriously prejudicial to the interests of the company" is sufficiently clear or helpful.

- **Percentage increase in remuneration of chief executive officer (Part 3, paragraph 20)**

  Some investment companies do not have any executive officers and only have a board of non-executive directors. Does this drafting mean highest paid director whatever the title?

- **Relative importance of spend on pay (Part 3, paragraph 21)**

  We note that companies will now be required to set out in graphical form the percentage spend on (and amounts) tax paid by the company in that financial year (paragraph 21(d)). This is an additional requirement from the June 2012 draft and most likely has been added to address recent high-level tax avoidance cases. However, it is not clear what 'tax paid' includes. Does this include VAT, Employers' NIC, business rates, etc? Furthermore, by 'paid' does this mean paid in cash or via a P&L charge? Also does this take into account deferred tax? This proposal needs further consideration and clarification in the revised draft.

- **Statement of shareholder voting (Part 3, paragraph 23)**

  Part 3, paragraph 23(c), makes reference to "substantial shareholder votes against the resolution". Does substantial mean majority or another percentage level? This should be clarified. In any event, given that investors who oppose resolutions on directors' remuneration do not always do so for the same reason, it may not be practicable for the company to take action.

- **Approach to recruitment remuneration (Part 4, paragraph 29(c))**

  We believe that the requirement to state "the maximum level of salary which may be awarded [on recruitment] expressed as a percentage of the salary of the highest paid director…" will be likely to have a ratcheting effect on pay, as any potential candidate will automatically know their 'target' salary.

If you would like to discuss any of this in further detail, we would be happy to attend a meeting.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Victoria Barron	Hermes Equity Ownership Services
Edward Beale	Western Selection Plc
Dan Burns	McguireWoods
Anthony Carey	Mazars LLP
Louis Cooper	Crowe Clark Whitehill LLP
Victoria Dalby	Capita Registrars Ltd
Kate Elsdon	PricewaterhouseCoopers LLP
Nicola Evans/Julie Stanbrook	Hogan Lovells International LLP
David Firth	Penna Consulting PLC
Peter Fitzwilliam	Mission Marketing Group (The) PLC
David Fuller	CLS Holdings PLC
Clive Garston	DAC Beachcroft LLP
Nick Graves	Burges Salmon
Andrew Hobbs	Ernst & Young LLP
Alexandra Hockenhull	Xchanging plc
David Isherwood	BDO LLP
Nick Janmohamed	Speechly Bircham LLP
Colin Jones	UHY Hacker Young
Dalia Joseph	Oriel Securities Limited
Doris Ko	Aviva Investors
Claire Noyce/Deepak Reddy	Hybridan LLP
James Parkes	CMS Cameron McKenna LLP
Peter Swabey	Equiniti
Eugenia Unanyants-Jackson	F&C Investments
Melanie Wadsworth	Faegre Baker Daniels LLP
Cliff Weight	MM & K Limited

Share Schemes Expert Group

Nicholas Stretch (Chairman)	CMS Cameron McKenna LLP
Fiona Bell (Deputy Chairman)	RM2 Partnership Limited
Barbara Allen	Stephenson Harwood
Simon Allum	Lewis Silkin
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Stephen Chater / Robert Postlethwaite	Postlethwaite & Co
Karen Cooper	Osborne Clarke
Jared Cranney	Interior Services Group plc
Vanessa Cundy Cooper	KPMG LLP
John Daughtrey	Equiniti
Michael Deeks	Olswang
Matthew Findley	Pinsent Masons LLP

David Firth	Penna Consulting PLC
Philip Fisher	PKF (UK) LLP
Amanda Flint/Amanda Stapleton	Grant Thornton UK LLP
Mark Gearing	Field Fisher Waterhouse
Andy Goodman	BDO LLP
Martin Griffiths	Charles Russell LLP
Paula Hargaden	Burges Salmon
Daniel Harris	Ernst & Young LLP
Colin Kendon	Bird & Bird LLP
Michael Landon/Nigel Mills	MM & K Limited
Peter Mossop/Collum Spillane	Sanne Group
Nick Wallis	Smith & Williamson Limited
Matthew Ward	Hewitt New Bridge Street