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MP298 ‘Enhancements to Appendix AW – Performance Assurance’

Annex A

Legal text – version 1.0

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

Section A ‘Definitions and Interpretations’

These changes have been redlined against Section A version 51.0.

Amend Section A.1 as follows:

SEC Release Testing Approach Document means a document established under Section D10.18 (SEC Release Testing Approach Document) and which contains the information listed in Section D10.19 in relation to the testing to be undertaken by the DCC with regards to a SEC Release.

SEC Risk means a risk that a failure to adhere to, or errors in delivering an obligation or mandated process under the SEC (including a risk which has materialised as an actual failure or error) could significantly and measurably affect the achievement of General SEC Objectives.

SEC Risk Data means Data or information relating to a Party’s contribution to a non-compliance with a SEC requirement which has led or contributed to a SEC Risk.

SEC Variation Testing Approach Documents means the SEC Subsidiary Documents set out in Appendix AJ, Appendix AK, Appendix AN, Appendix AQ, Appendix AR and Appendix AX.

Appendix AW 'Performance Assurance Framework'

These changes have been redlined against Appendix AW version 1.0.

Amend Section 1.1 as follows:

- 1.1 This Appendix sets out the provisions of the “Performance Assurance Framework” or “PAF”. ~~to be implemented by the Performance Assurance Board (PAB).~~

Add Section 2 as follows:

2. Performance Assurance Board

- 2.1. The Panel shall establish a Sub-Committee in accordance with the requirements of Section C9 to be known as the “Performance Assurance Board” or “PAB”. The PAB shall implement and give effect to the PAF on behalf of the Panel.

Amend Section 3 as follows:

2.3. **Risk Identification and Evaluation**

- 3.1 A “SEC Risk” is a risk that a failure to adhere to, or errors in delivering an obligation or mandated process under the SEC (including a risk which has materialised as an actual failure or error) could significantly and measurably affect the achievement of General SEC Objectives.
- 3.2 The PAB shall establish and maintain a risk-based methodology (the "Risk Evaluation Methodology") to ~~be used~~ define the process used by the PAB to proactively identify, evaluate and assess the significance of SEC R risks to the fulfilment of the SEC General Objectives which may arise from breaches of this Code.
- 2.13.3 The significance of the SEC Risk shall be constructed in terms of the probability of failure or error and its impact on SEC General Objectives.

~~2.2 The Risk Evaluation Methodology must describe the process to be used for:~~

- ~~a) identifying risks to the fulfilment of the SEC Objectives;~~
- ~~b) evaluating risks which have been identified; and~~
- ~~c) assessing the materiality of identified risks.~~

~~2.33.4~~ In relation to the establishment of the Risk Evaluation Methodology, or where the PAB considers that a change to the Risk Evaluation Methodology would further the aims of the PAF and/or further facilitate the SEC General Objectives, the PAB shall:

- ~~a) to the extent that it would not compromise the aims and effectiveness of the PAF,~~ issue a draft of the Risk Evaluation Methodology for consultation with Parties, the Authority, Citizens Advice, Consumer Scotland~~Citizen's Advice Scotland~~ and such other stakeholders as the PAB considers appropriate;
- b) consider any comments received during that consultation and make any amendments to the draft that it considers appropriate in light of those comments; and
- c) approve and adopt the Risk Evaluation Methodology.

3.5 The PAB shall periodically (at least annually) review the Risk Evaluation Methodology to ensure it remains fit for purpose.

~~2.43.6 To the extent that it would not compromise the aims and effectiveness of the PAF,~~
The PAB shall publish the approved Risk Evaluation Methodology (and any revision of it) on the SECCo Website.

~~2.51.1 The PAB shall periodically (at least annually) review the Risk Evaluation Methodology to ensure it remains fit for purpose.~~

Amend Section 4 as follows:

3.4. Performance Assurance Risk Register

The PAB shall:

- 4.1. prepare a "Performance Assurance Risk Register" that sets out the risks to the fulfilment of the SEC General Objectives (SEC Risks) which may arise from breaches of specified provisions of this Code.
- 4.2. The PAB shall identify, evaluate and assess the significance of SEC Risks by applying the Risk Evaluation Methodology.
 - ~~a) identify, evaluate and assess the materiality of risks to the fulfilment of the SEC Objectives which may arise from breaches of this Code by applying the Risk Evaluation Methodology;~~
 - ~~b) prepare a "Performance Risk Register", setting out the risks to the fulfilment of the SEC Objectives which may arise from breaches of specified provisions of this Code and the significance of each risk;~~
 - ~~c) publish the approved Performance Risk Register on the SECCo Website; and~~
 - ~~d) periodically (at least annually), review the Performance Risk Register to make sure it remains fit for purpose.~~
- 4.3 In relation to the establishment of the Performance Assurance Risk Register and each review of the Performance Assurance Risk Register, the PAB shall follow the same process as applies to the Risk Evaluation Methodology under paragraph 3.4.2.3
- 4.4 The PAB shall periodically (at least annually), review the Performance Assurance Risk Register to make sure it remains fit for purpose.
- 4.5 Where the PAB approves a change to the Risk Evaluation Methodology it shall consider whether corresponding revisions are required to the Performance Assurance Risk Register.
- 3.24.6 The PAB shall publish the approved Performance Assurance Risk Register (and any revisions of it) on the Website.

Amend Section 5 as follows:

4.5. Performance Assurance Techniques

4.45.1 The PAB shall establish a set of techniques as described in this paragraph 54 (the “Performance Assurance Techniques”).

4.25.2 The Performance Assurance Techniques shall be the techniques which the PAB considers can be applied to mitigate SEC Risks~~risks~~ identified in the Performance Assurance Risk Register and or to address any actual non-compliance that occurs.

4.35.3 These Performance Assurance Techniques shall~~may include~~:

- a) proactively preventative techniques~~—to promote—~~ compliance and minimize potential SEC Risk impacts before they occur~~assurance by acting early in the life cycle to avoid non-compliance~~;
- b) detective techniques~~—to identify evidence of areas of potential or actual non-compliance,~~ and SEC Risk impacts that have occurred;
- c) corrective techniques~~—to remedy non-compliance~~ and rectify or reduce SEC Risk impacts that have already occurred; and
- d) incentivisation techniques~~—to encourage operational compliance~~ to code obligations and SEC Risk mitigation.

5.4 The PAB shall periodically (at least annually) review the Performance Assurance Techniques to ensure they remain fit for purpose.

4.45.5 The PAB shall publish the list of Performance Assurance Techniques on the Website.

Add Section 6 as follows:

a)6. Performance Assurance Data Requests

~~4.56.1 In relation to detective techniques, t~~The PAB may require Parties to provide Data to the PAB (or the Code Administrator) to present a comprehensive overview of assurance. When considering or making Data requests, the PAB shall:

a) to the extent practicable, utilise existing reports and Data;

b) ensure each Data request is (in the PAB's reasonable opinion):

(i) (i) necessary for the performance of the PAB's duties;

(ii) (ii) relevant and proportionate to the purposes and objectives of making such request; and

~~b)(iii)~~(iii) (iii) not overly burdensome on the relevant Parties;~~;~~ and

c) where the PAB considers (acting reasonably) that a Data request will introduce a substantive ongoing reporting requirement, carry out a consultation with the affected Parties in order to identify and (where reasonably practicable) address concerns of affected Parties.

6.2 Where a Data request is made under paragraph 6.14.4, each Party subject to the request shall take reasonable steps to ensure that relevant Data is promptly made available to the PAB in an accessible form.

4.66.3 The PAB shall publish a list of Data requests by Party Category on the Website.

~~4.7 In relation to the establishment of the Performance Assurance Techniques and each review of the Performance Assurance Techniques, the PAB shall follow the same process as applies to the Risk Evaluation Methodology under paragraph 2.3.~~

~~4.8 To the extent that it would not compromise the aims and effectiveness of the PAF, the PAB shall publish the list of Performance Assurance Techniques on the SECCo Website.~~

~~4.96.4 The PAB shall periodically (at least annually) review the Performance Assurance Techniques to ensure they remain fit for purpose~~

Add Section 7 as follows:

7. Publication of SEC Risk Data

7.1 The Panel may:

a) following a recommendation made to it by the PAB; and

b) subject to the following provisions of this paragraph 7,

determine that Data or information relating to a Party's non-compliance with a SEC requirement which has led or contributed to a SEC Risk ("SEC Risk Data"), shall be published on the Website.

7.2 The PAB may make a recommendation to the Panel that SEC Risk Data should be published where:

a) in circumstances where the non-compliance leading or contributing to a SEC Risk is a cross-industry non-compliance, it has issued a request for information to all Parties in relation to the non-compliance and has determined that it has not received a satisfactory response from every Party; or

b) in circumstances where the non-compliance leading or contributing to a SEC Risk is by one or more (but not all) Parties, it has issued a request for information to each such Party in relation to that Party's non-compliance and has determined that it has not received a satisfactory response from that Party; and

c) it has issued:

(i) a Risk Management Determination to the relevant Party in accordance with paragraph 9; or

(ii) a notification which requests the Party to undertake or refrain from certain actions or remedy certain omissions, and

the Party has not undertaken, refrained or remedied such actions or omissions.

7.3 The Panel may only determine that SEC Risk Data shall be published, where it

considers that the publication of the data is a relevant and proportionate response to the Party's non-compliance and the SEC Risk arising from the Party's non-compliance.

7.4 Where the Panel makes a determination that SEC Risk Data shall be published, the PAB shall give at least 5 Working Days' notice to each Party whose SEC Risk Data will be published of the proposed date of publication.

—The publication of SEC Risk Data in accordance with this paragraph 7 shall be without prejudice to the provisions of, and the rights of the Parties under, Section M4 (Confidentiality).

Amend Section 8 as follows:

8. Performance Assurance Operating Plan

4.108.1 The PAB shall prepare a '**Performance Assurance Operating Plan**' which shall set out the Performance Assurance Techniques that can potentially be applied in relation to the most ~~significant~~material risks identified in the Performance Risk Register, Data Requests, together with (where reasonably practicable) the forecast cost (whether to SECCo and/or to Parties) of implementing each relevant technique.

4.118.2 In relation to the establishment of the Performance Assurance Operating Plan and each review of the Performance Assurance Operating Plan, the PAB shall follow the same process as applies to the Risk Evaluation Methodology under paragraph 3.42.3.

4.128.3 The PAB shall periodically (at least annually) review the Performance Assurance Operating Plan to ensure it remains fit for purpose

8.4 Where the PAB approves a change to the Risk Evaluation Methodology and/or Performance Assurance Risk Register, it shall consider whether corresponding revisions are required to the Performance Assurance Operating Plan.

4.138.5 The PAB shall publish the Performance Assurance Operating Plan (and any

revisions of it) on the Website.

Amend Section 9 as follows:

5.9. Risk Management Determinations

5.19.1 The PAB shall make a ‘**Risk Management Determination**’ in relation to each Party.

5.29.2 The Risk Management Determination shall be a determination (in accordance with the Risk Evaluation Methodology) of

- a) which SEC Risks in the Performance Assurance Risk Register are relevant to the particular Party (based on materiality of a SEC Rrisk for the relevant Party Category and the individual Party); and
- b) the Performance Assurance Technique(s) that are to be applied (and the manner in which they are to be applied) in relation to each SEC Rrisk; and-
- c) any Data requests as described in paragraph 6.1.

5.39.3 Having made an initial Risk Management Determination for each Party in accordance with paragraph 96.2, the PAB shall:

- a) notify the Party of the Risk Management Determination (and any revised Risk Management Determination) made for it; and
- b) thereafter ~~from time to time~~ re-assess and/or revise the Risk Management Determination for each Party where its circumstances change or there is a change to the Performance Assurance Operating Plan.

5.49.4 A Party shall be entitled to request re-assessment of its Risk Management Determination by the PAB where that Party considers that:

- a) the PAB has given undue weight to the risk or likelihood of occurrence in the Party’s Risk Management Determination; or

b) there is a relevant change in the circumstances of the Party.

~~5.59.5~~ Where a Party disagrees with the contents of a Risk Management Determination which applies to it following a PAB requested re-assessment, then the Party in question may refer the matter to the Panel for determination. In such circumstances, the Party shall be informed of the Panel meeting at which the matter is to be determined and shall be entitled to submit representations to the Panel and/or attend the Panel meeting for that item of business only. The decision of the Panel shall be final and binding for the purposes of this Code.

Amend Section 10 as follows:

6.10. Application of the Performance Management Techniques

~~6.10.1~~ The PAB shall apply and implement the Performance Assurance Techniques in accordance with: ~~the Performance Assurance Operating Plan and each Risk Management Determination.~~

a) ~~t~~The ~~technique(s)~~~~Performance Assurance Technique(s)~~ to be applied ~~in respect of each~~to each SEC Risk ~~as shall be techniques specified as applicable to such risk~~ in the Performance Assurance Operating Plan; and

b) ~~but~~ the technique(s) to be applied to individual Parties (and the manner and extent to which they are to be applied), to individual Parties shall be as described in the applicable Risk Management Determination.

10.2 Parties within the same Party Category may be subject to different Performance Assurance Techniques to reflect variations in materiality of risks between Parties.

~~6.210.3~~ Parties are required to respond to any Performance Assurance Technique that is applied under this Section AW. Each Party subject to a Performance Assurance Technique shall take reasonable steps to ensure that a relevant response is made available to the PAB in an accessible form by the requested deadline.

Amend Section 11 as follows:

7.11. Annual Performance Assurance Report

7.11.1 Following the end of each financial year (1 April to 31 March), the PAB shall prepare an Annual Performance Assurance Report for the year, to be presented to the Panel. The Annual Performance Assurance Report shall set out the results of the PAB's activities:

- a) ~~the results of the PAC's activities, in particular,~~ the extent to which the application of Performance Assurance Techniques mitigated ~~the~~ SEC Risks in the ~~Risk~~-Performance Assurance Risk Register;
- b) the actual costs to SECCo, and (as far as reasonably practicable) to Parties, of implementing the Performance Assurance Techniques, and a comparison against the estimated costs set out in the Performance Assurance Operating Plan (with an explanation for any differences);
- c) any recommendations to modify existing Performance Assurance Techniques or establish new Performance Assurance Techniques; and
- d) the benefits (including any cost savings) of any modifications to Performance Assurance Techniques.

7.211.2 The Annual Performance Assurance Report shall be published on the ~~SECCo~~ Website.

Add Section 12 as follows:

12. Escalation to the Panel

12.1 If a Party is in breach of any of its SEC obligations or is the cause of a material impact on a SEC Risk(s), the PAB shall have the right to escalate the Party to the Panel.