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Dear Sir

Draft Guidance on Auditor Liability Limitation Agreements

We welcome the opportunity to comment on the Financial Reporting Council's (FRC) consultation on the draft guidance for auditor liability limitation agreements (LLA).

Whilst we are grateful to the FRC for producing guidance, we consider that this guidance will be of more assistance to directors and shareholders than to auditors and we are, therefore, limiting our response to the consultation and guidance to a few general comments.

We understand that there is some concern that directors need greater guidance on the matters they need to consider before they will feel able to bring LLA resolutions to shareholders. Should this concern be raised by other respondents to the consultation we consider that it may be appropriate to include guidance that would assist companies in this regard.

With reference to the draft guidance, we suggest that companies can be placed within two categories – those with, and those without, institutional investors.

It is becoming clear that, at this time, most institutional investors will only support proportionate liability limitation, with a financial cap only being acceptable in exceptional circumstances.

As the draft clause contained at B(i) – version 2 (pages 29 to 33) provides for proportionality whilst including the protection of a Court assessing the agreement against the ‘fair and reasonable’ test, we strongly suggest that the guidance only includes this option, together with the option for a financial cap for exceptional circumstances for companies with institutional investors and generally for private companies. We consider that this version is more preferable to the longer version 1, and understand this is the general view of many other commentators.

We consider it likely that the form of liability limitation agreements for other companies will be considered on a ‘company by company’ basis and will be subject to drafting and consideration by in-house legal staff. We believe that, in the majority of cases, these are likely to form part of the audit engagement letter.

In these circumstances, we do not consider that the guidance needs to include any of the other draft clauses (Appendices B and C) which, arguably, provide little assistance to companies, their auditors or shareholders.

Please do not hesitate to contact Peter Wyman should you require any further information. We are content for this response to be published.

Yours faithfully

PricewaterhouseCoopers LLP

