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12 September 2023

Financial Reporting Council
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By email: codereview@frc.org.uk

Dear Sir/Madam

SUBJECT: Endeavour Mining plc Corporate Governance Code Consultation ("Consultation") Response

The Non-Executive Directors of Endeavour Mining plc ("Endeavour" or "the Company") have reviewed the Consultation documentation carefully. In addition, our Audit Committee Chair and Deputy Company Secretary have attended a number of round table discussions on the draft Code hosted by Big 4 firms, the Audit Committee Chairs' Independent Forum ("ACCIF"), Independent Audit and IOD. I set out below our collective views on some of the proposed changes.

We are committed to play a full part in this important activity. We recognise the need to enhance the transparency of how reporting responsibilities are discharged by boards and audit committees, and we welcome initiatives around the Resilience Statement and the Audit and Assurance Policy. We also believe that the reporting on the board's oversight of the effectiveness of risk management and internal control systems needs to be more standardised to facilitate informed decision-making by all stakeholders and to ensure some comparability across various international capital markets.

Whilst we welcome many of the FRC's proposals, some of which are already standard practice at the Company, there are some which are not practical and/or may be costly to implement.

The proposals do not come with a cost/benefit analysis and the limited work done in the BEIS consultation does not in our opinion, reflect the experience of a number of our Directors in implementing control attestation projects in the past. As you will see from our detailed response, we do not support the proposed changes to the reporting of the effectiveness of risk management and internal control systems. In our view, the proposals to include all internal controls within the scope of the declaration, and their effectiveness throughout the year will impose a significant new burden on companies and creates a much higher bar in the UK than any other major international market.

We have a genuine concern that at a time when UK public markets perception and attractiveness is being challenged, some of these proposals could result in making the UK market public market more unattractive for issuers when it needs to be more competitive. In addition, we are facing a number of other new regulatory requirements and it would be helpful if there was alignment with Code changes. Simply adding more requirements into the Code will result in yet more pages within the Annual Report, which would seem to run counter to an objective of improving transparency and could lead to the risk of boiler-plating.

We recognise and commend the continued approach of a comply or explain principles-based Code, which enables a flexible and agile approach; however within the FTSE 100 there are many companies, such as Endeavour, which are dual listed. There is little or no equivalence given to the practices and disclosures

required under other exchanges and as a result we anticipate duplication of effort. It can also mean that we have areas of non-compliance with the Code due to historic practices which are accepted on North American exchanges but which draw attention from proxy advisors in the UK who apply a simple yes/no tick box approach. This practical issue has not been addressed by the draft proposals and is a potential missed opportunity.

Under the changes there will also be a significant increase in the obligations imposed on directors of UK listed companies, without commensurate remuneration to compensate them for the additional exposure to liability and time commitment, leading to a shrinking pool of talent for non-executive directors, at a time where opening up opportunities and improving the diversity of talent within UK plc, should be a priority.

We have specific comments on the Consultation set out by section below. [redacted], the Chair of our Audit Committee and I, are available to discuss these matters further if required.

Yours faithfully

[redacted]

Endeavour Mining plc

Section 1 Board Leadership and Company Purpose

Q1 Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?

Clarification and guidance is needed on the meaning of the word "outcomes" as it is not always possible to report on the outcome of a governance initiative and outcomes are not always immediate on the introduction of a new activity.

Q2 Do you think the board should report on the Company's climate ambitions and transition planning, in the context of strategy, as well as the surrounding governance?

We do not support the amendment to Provision 1.

There would seem to be a risk of overlap between the proposed changes around *climate change and transition planning* and the existing TCFD disclosure requirements. Including such specific disclosures in a provision seems to run counter to a principals-based approach and an encouragement for Boards to provide transparent reporting on material matters.

Q3 Do you have any comments on the other changes proposed to Section 1?

We do not support the amendment to Provision 3.

We do not find the change to the second sentence relating to engagement by committee chairs helpful and our view is that the existing wording works better as currently drafted and reflects the practical reality. Although committee chairs do make themselves available and seek to engage with shareholders, shareholders do not always have the time to engage with committee chairs and often prefer to communicate with the investor relations department or the chair of the company on a variety of issues, which can then be reported back to the appropriate committee chairs. The experience of our Audit Chair is mirrored by peers who responded to the ACCIF survey.

Section 2 Division of Responsibilities

Q5 Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?

We do not support the amendment to Provision 15.

The proposal that annual reports should include more information on directors' other commitments and how they manage these, goes beyond what we believe to be appropriate and in our view, the current disclosure obligations are sufficient. The suggestion in the Consultation that this information should include setting out not only board positions but also committee roles and the potential number of commitments each year, is too invasive and the disclosure of such detailed information about external companies would need to be agreed with those companies. Such information would in any event not provide an accurate reflection of time commitments because companies can vary in size and complexity and meetings can vary in duration and in the amount of preparation required. The frequency of meetings can fluctuate greatly in any given year, depending upon developments ongoing within a company such as for example any M&A transactions, capital raisings or board changes. Furthermore, the role of the independent non-executive director is to stand back from management and review the business of a company from outside and not to be too "hands on" in the day to day running of the business, otherwise this could jeopardise their independence. Arguably the Code should not be aiming to increase time spent by non-executive directors on their duties which could lead to their roles crossing over into the executive territory.

Our preference is to maintain the status quo where there is a full review of current time commitments by the board on the appointment of a new candidate, with an assessment of directors' time commitments and individual performance each year and a detailed review and approval of each new potential external appointment as these arise, with any significant appointments taken on by directors explained, with the inclusion in the company's annual report of board and committee attendance registers, showing the level of commitment of directors to their roles.

Section 3 Composition, succession and evaluation

Q7 Do you support the changes to Principle I moving away from a list of diversity characteristics to the proposed approach which aims to capture wider characteristics of diversity?

Yes, we agree mostly with this change but we have some comments.

We are supportive of this principle and the way in which it widens the definition of diversity rather than its being limited to gender, social and ethnic backgrounds. We commend the approach of the Code in that it does not set targets, although companies still need to follow the targets set out in the Listing Rules which only cover two protected characteristics. We believe in true diversity whilst achieving the right skill set on boards but do not believe it is helpful to prescribe the number of non-white ethnic minorities or percentage of the board that should be women. We would advocate having a combined diversity statistic such as that we report in our annual report, of 66% diverse board members in our case when women and ethnicity are added together. This could be expanded to include social background, disability and other protected characteristics. It might however be intrusive for directors to disclose all their protected characteristics publicly in an annual report. Precise quotas have achieved an important purpose in the past, where boards were very much lacking in diversity and these have helped to fast track the progression of minorities into the boardroom but retaining strict quotas now that diversity has evolved, can be unhelpful in achieving a board that is truly fit for purpose.

Section 4 – Audit, risk and internal control

Q10 Do you agree that all Code companies should prepare an Audit and Assurance Policy on a "comply or explain" basis?

Yes, we do agree that all Code companies should prepare an Audit and Assurance Policy ("AAP") on a "comply or explain"' basis but we have some comments.

We agree that as a FTSE 100 company, an Audit and Assurance Policy would be helpful to us and beneficial for our stakeholders, although the inclusion of this requirement in the Code and on a comply or explain basis may not be appropriate for all companies.

The scope of such policy will be defined by the Companies Act and other relevant legislation and should be the responsibility of the audit committee. We do not agree that we should consult with shareholders on our approach to putting such a policy in place, although it is appropriate that any questions on it are addressed to the audit committee as a first point of call. We anticipate that as stakeholder demands shape the need for specific reporting metrics, (eg green finance, ESG metrics), the extent of assurance sought by the audit committee under the policy will evolve.

Q12 Do you agree that the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting and where appropriate ESG metrics, where such matters are not reserved for the board?

We do not agree that the audit committee should have sole or default responsibility for narrative reporting.

Whilst we believe that the audit committee should be responsible for assurance of data integrity and internal controls, there should be some flexibility on which committee gives assurance over various different areas which are not in the remit of the audit committee. "Narrative reporting" is a very wide term and encompasses

among other areas, corporate governance, strategy, environmental and social matters as well as principal risks. Monitoring the integrity of all these areas would add considerably to the workload of the audit committee and expose non-executive directors to increased liability. The work involved in doing this is not proportionate and could amount to a "verification" exercise. There is also a risk that an expectation gap arises on the level of assurance being provided on non-financial and narrative information. The scope of such assurance is still evolving and there are many external providers who are not subject to the same level of regulation and guidance as both internal and external audit. The AAP and reporting on outcomes against the policy will be an essential tool in managing this expectation.

Q13 Do you agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way?

We do not support the proposed amendments in relation to the risk management and internal control systems declaration.

At a conceptual level many of these proposals make sense and build on existing requirements in the Code. However, at a practical level, we are very concerned that the proposals represent a significant change for many companies, including Endeavour and we believe that the level of incremental resource required will be considerable. In the absence of detailed guidance and worked examples we are worried that there will be a wide range of interpretation which will lead to comparability challenges between sectors and competitor companies. We also feel that, despite FRC comments to the contrary, the proposed changes do represent an extension of the requirements that some UK companies currently comply with as US Foreign Registrants and ourselves as a Canadian Registrant. Therefore, it is important to identify what additional work will be necessary (for example, a declaration of effectiveness throughout the year rather than point in time (referred to by yourselves as "continuous monitoring"), and the inclusion of all controls, rather than just those relating to financial reporting). It would be helpful to understand how you can conclude that this is a lesser requirement than for Sarbanes-Oxley. It certainly extends beyond the requirements of Canadian regulation 52-109.

We support the options put forward by the ACCIF in their response which are repeated below:

1. Call for specific narrative on the steps taken by the board to assess the effectiveness of the risk management and internal control systems.
2. Focus the declaration just on the effectiveness of internal controls over financial reporting in the first instance (see Q15 below).
3. Make the declaration on the effectiveness of internal controls over financial reporting as at the balance sheet date (see Q14 below).
4. Stagger the implementation of these proposed changes, so that well-resourced organisations, perhaps with experience of Sox reporting, are required to adopt the changes first with a phased implementation thereafter.

Q14 Should the board's declaration be based on continuous monitoring throughout the reporting period up to the date of the annual report, or should it be based on the date of the balance sheet?

We believe that the board's declaration should be at the balance sheet date.

The key controls attestation should be at the balance sheet date to ensure consistency with other exchange reporting requirements, most notably US SOX. A statement regarding effectiveness throughout the year would incur significant additional cost and resources.

Q15 Where controls are referenced in the Code, should "financial" be changed to "reporting" to capture controls on narrative as well as financial reporting, or should reporting be limited to controls over financial reporting?

We believe reporting should be limited to controls over financial reporting.

The board is currently required under Provision 29 to review the effectiveness of risk management and internal control systems to monitor all material controls including financial, operational and compliance controls. Judging from the feedback and roundtable discussions there have been a lot of concerns expressed over the requirement for an attestation statement over all material controls. This is based on the practical experience of many Audit Chairs and CFOs who have implemented and or audited SOX internal control processes previously.

As noted above, systems and controls around non-financial reporting are continuing to evolve and are far less mature than those for financial reporting. The language in the draft code is similar to US SOX and as such it is likely to generate expectations that the board will have undertaken detailed reviews of both the design and operating effectiveness of a wide number of controls (operational, financial and non-financial). This assurance can only be given at a high level when the new Code first comes into force and in order for the board to provide meaningful assurance, we believe that there needs to be a phased approach to full compliance with the provision in order to give companies time to prepare for these new responsibilities.

Companies could perhaps declare the effectiveness of financial controls alone to begin with, before starting to make the declaration in relation to some limited components of non-financial reporting and gradually over the years do so in respect of all of them, once directors have reached a significant level of comfort over each of these areas. It would be damaging to issuers if they were forced to declare material weaknesses in any of these new areas in the first few years after the new Code comes into force, when there is in fact no material cause for concern from investors.

An alternative and more practical solution would be to consider enhancing the guidance which supports existing Provision 29 to encourage greater transparency in reporting.

Q16 To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?

Q17 Do you have any proposals regarding the definitional issues, e.g. what constitutes an effective risk management and internal controls system or a material weakness?

Q18 Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?

We note that the board is expected under the proposed changes to conclude on the effectiveness of internal controls throughout the reporting period and explain how it has monitored these systems as well as any material weakness and actions by the board to address them. In the event that these changes are adopted within the new Code there needs to be clear guidance in this area and in particular with regard to what constitutes a material weakness and clarity as to what constitutes a minimum baseline requirement for compliance.

In addition, we consider that it would be appropriate that the guidance is clear on the expectations around the level of assurance that is being provided from internal sources versus external assurance and the potential reporting frameworks. This will be critical in managing expectations, particularly with regards to non-financial information, where we already use multiple providers of assurance given the need for specific expertise. This is all still at an early stage of development, across many if not all industries, and does not have the maturity of reporting on internal financial controls.

Section 5 Remuneration

Q23 Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?

We do not agree with the proposed reporting changes around malus and clawback.

Whilst we are fully aligned with the majority of the proposed changes to this section of the Code, we are not in agreement with the part of the provision requiring companies to stipulate the minimum circumstances in which malus and clawback would apply and the minimum period to which they apply. These requirements do not give sufficient flexibility to the remuneration committee; the use of these tools should be carefully considered on a case by case basis and at the remuneration committee's discretion, as there are many different factors to consider in any such circumstance and these cannot be predicted in advance. The committee should have freedom to intervene in any given situation at such time in such way as they deem appropriate under the fact set in question.