CORPORATE

LSEG

A revised UK Corporate Governance Code

September 2023

Introduction

LSEG is a leading global financial markets infrastructure and data provider, trusted to deliver excellence by customers, partners and markets around the world. We play a vital social and economic role in the world's financial system. With our trusted expertise and global scale, we enable the sustainable growth and stability of our customers and their communities.

We operate across three divisions:

- **Data & Analytics**. Through Refinitiv, we can provide the breadth and depth of financial data and best-in-class analytics that customers expect – driving innovation and growth across global markets. And our high-performance solutions – from trading to market surveillance, to wealth solutions and more – help to enhance the performance of our customers. FTSE Russell is a leading global provider of financial indexing, benchmarking and analytic services with more than $16trn benchmarked to our indices – and offers an extensive range of data services and research. The combination of Refinitiv and FTSE Russell provides LSEG with leading capabilities in data, analytics, indices and benchmarks.

- **Capital Markets**. Supporting customers across the end-to-end capital markets workflow, providing them with access to liquidity across multiple asset classes and regions. We are a leading provider of listing and execution venues in equities, fixed income, and foreign exchange. The London Stock Exchange, our UK-regulated market, remains the most international market in the world, serving over 1,900 equity issuers that are headquartered in over 60 countries; £391bn has been raised for equity finance in London Stock Exchange's market over the past ten years. Since its launch in 1995, over 4,000 companies have joined AIM, our market for growing companies, have raised over £132bn in growth capital.

- **LSEG Post Trade**. Supporting customers' clearing and reporting obligations, providing risk and balance sheet and financial resource management solutions, and working with our other divisions to extend this support across the value chain. We operate a group of leading multinational clearing houses, with clearing operations in the UK, the Eurozone, the US and an expanding presence in the Asia Pacific and Latin America. LCH is our leading global clearing house. LCH operates in 62 participating countries, with over 800 buyside customers, 150 member banks and over 50,000 end users.

A revised UK Corporate Governance Code

We welcome the opportunity to comment on the FRC's proposed revisions to the UK Corporate Governance Code ("the UK Code"). This response is shaped both from our perspective as a listed entity and a constituent of the FTSE 100, but importantly also as a market operator. The London Stock Exchange is an important part of our Group, and through it, we engage extensively with a range of issuers. In relation to the revisions proposed by the FRC, we have heard strong feedback from a number of issuers – and these insights have also informed our response.

The UK Government's stated objective is to ensure the UK's economy is globally competitive, and is the best place for growth companies to access the capital which enables them to start, scale and stay here. LSEG shares this ambition for UK plc.

Although we appreciate the spirit with which the FRC has sought to take forward the range of policy issues that the Government asked it to consider, we strongly encourage the FRC to reconsider how it has re-drafted large parts of the UK Code, particularly with respect to the breadth and nature of controls and narrative reporting being considered in scope, as well as the time period and frequency with which controls should be monitored.

We are concerned that the cumulative impact of a large number of these proposals as currently drafted – which are both more onerous than in other jurisdictions and will impose higher costs for companies – will have significant negative consequences on companies and their boards, and therefore impact the attractiveness of the UK as a place to do business.

Importantly, it will also make the UK a less attractive listing venue, therefore directly conflicting with the stated objectives and initiatives of the UK Government, most recently set out in the Chancellor's Mansion House speech in July.

UK Competitiveness

The UK has rightly prided itself on a listing regime which upholds robust standards of corporate governance and conduct. It is a model for many other countries looking to develop their own capital markets.

With both public and private investors becoming increasingly international in how they deploy their capital, companies increasingly have a wider range of options available to them when seeking to finance their growth. Over the past three years, LSEG has been pleased to contribute ideas to Government and regulators about how to strengthen the UK's financial ecosystem, from the Hill Review in 2021 through to the Chancellor's Mansion House Reforms earlier this year. UK capital markets must continue to evolve, so that they remain a source of long-term financing to enable companies to grow, innovate and create jobs.

Making the UK the premier destination for starting and growing a business, and for investment, is an LSEG priority; one that we share with the Government, and many

others. Corporate governance is a critical tool to delivering this objective. It is the cornerstone of successful and sustainable businesses of all types.

Good governance benefits investors and growing companies alike and is central to a trusted framework which facilitates an economy in which wealth is created. The UK's governance framework for publicly listed businesses supports their ability to access equity and debt capital. We believe it has delivered a strong and robust system that supports investor confidence and has helped support the job creation associated with sustainable long-term growth.

LSEG will be pleased to engage further with the FRC and others during the coming autumn to make sure that the UK Code properly reflects the spirit of the Government's intentions.

Restoring – and hardwiring – the 'comply or explain' principle into the UK Code

We believe there is an urgent need for the FRC to proactively re-emphasise to investors, proxy advisers and others that the UK Code is a 'comply or explain' document, and not a 'comply or else' one.

Over the course of 2023, we have increasingly received feedback from issuers, in our role as the operator of the Main Market and AIM, who feel the 'comply or explain' approach, which has served the UK so well, has, in practice, transitioned to a 'comply or else' regime. This development, coupled with the nature of some of the proposals, would suggest that a broader reconsideration of the way forward would be appropriate.

In recent years, we have seen investors and their advisers take a highly standardised, box ticking approach to assessing a company's compliance with and disclosure against the UK Code (as a result of pressure to process votes). As a result, many companies often feel compelled to rigidly follow guidelines to avoid negative consequences (e.g., shareholder revolts or negative media coverage). Such an approach inevitably leads to strained and lower quality engagement between companies and their shareholders.

For the UK Code to remain effective in the long-term, we consider it essential for the FRC to work with a wide range of stakeholders to restore a common understanding of the 'comply or explain' approach, so that companies have genuine flexibility and agency to depart from the Code, so long as they can provide cogent explanations and justification for any such departures.

In the absence of an ability to explain departures from the Code, we believe there is a real risk of the Code becoming prescriptive regulation which hinders companies transitioning from private to public – and impedes existing public companies from adopting governance arrangements which are genuinely appropriate for their stage of development and aligned with those of their international peers.

Leveraging existing UK legislation and regulation

We note that since the UK Code was last revised in 2018, there have been various additions to the UK's legislative and regulatory landscape, most notably in the fields of sustainability and climate reporting, but also with respect to diversity and inclusion.

For example, we have engaged extensively with the Department for Business & Trade (formerly the Department for Business, Energy and Industrial Strategy) on mandatory non-financial climate-related disclosures, and the FCA on amendments to its Listing Rules and Disclosure and Transparency Rules. We believe they provide companies with clear direction on what they should be communicating to their shareholders and others.

We are therefore keen to make sure that any forthcoming changes to the UK Code take account of these developments that have taken place over the past five years, and do not unnecessarily add to the burden. Not doing so risks negatively impacting market wide competitiveness by not only causing confusion among companies but also increasing costs and burdens for companies and their directors through duplicative and sometimes additive requirements which do not necessarily provide value to shareholders.

Key points to the consultation questions

- The UK Code should recognise the fact that outcomes-based reporting is already at the heart of what companies like LSEG do as part of their Section 172 obligations. We advise simplifying Principle D to re-emphasise the ‘comply or explain’ concept into the UK Code.
- We agree that the board should report on the company’s climate ambitions and transition planning in the context of its strategy. However, the UK Code should be signposting to existing UK rules and legislation that already set out the information that companies should provide their investors in a way that are consistent with global standards.
- Companies should not be required to explain "how each director has sufficient time to undertake their role effectively in light of commitments to other organisation". In practice, companies will not be able to report on this in any meaningful or informed way, and so this will lead to boilerplate reporting.
- We support the introduction of a triennial Audit and Assurance Policy (AAP) – but believe this should explicitly cover only ‘material’ items within the Annual Report and Accounts (and not public information more broadly). Extending the scope of the AAP will likely see the costs of compliance for companies far outweighing any supposed benefit for the user.
- Any engagement with external stakeholders, such as shareholders, on the AAP should be on a voluntary, not mandatory, basis.
- We do not believe that the Audit Committee needs to be the accountable body for ESG reporting. Companies should have the freedom to choose whether any particular committee or the board as a whole holds responsibility for this.
- If the Audit Committee is to be responsible for narrative reporting, then this should only cover narrative reporting of financial performance rather than narrative across the Annual Reports and Accounts (ARA) more broadly. Extending its remit to the latter will weaken existing accountability frameworks between a company board and shareholders, not enhance it.
- We are strongly against the proposal for “continuous monitoring” of controls as it places a disproportionate burden on boards and risks obfuscating the role of non-executive directors and management. We believe such an approach would discourage companies (international and domestic) choosing to list in the UK – which is a stated government objective – and diminish the UK's attractiveness as a destination for inward investment. Any board declaration should be as at the balance sheet date.
- We do not support the proposed change from “financial” controls to “reporting” controls. In recognition that the ARA includes data other than financial data, the term “numerical” or “data” should be considered instead.
- We do not support the inclusion of “operational and compliance” controls within scope – the focus should be on controls linked to the Principal Risks.

- We support the proposed reporting changes around malus and clawback, and agree they will improve transparency.
- We do not consider this to be the best time to examine the role of AI in corporate governance. We recommend deferring such debate for another time. Given AI is an area that is complicated, fast evolving and could have far-reaching consequences in the future, the FRC should engage directly with companies and investors on this at a later date, away from this current review of the UK Code (e.g., through the FRC Lab).

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?

We do not agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting.

In the first instance, we would note that outcomes-based reporting is already at the heart of what companies like LSEG do as part of their Section 172 reporting requirements. Listed companies are already required to comply with Listing Rule 9.8.6(6) and this Listing Rule addresses the comply-or-explain requirements in relation to the provisions of the Code.

We also believe that the terms "governance activities" and "governance outcomes" are unclear and therefore the current drafting would be likely to result in boilerplate statements.

In order to deliver the FRC's stated objective of outcomes-based reporting, we recommend simplifying Principle D, so that it reads: "*When reporting on its governance, the board should explain how it has applied the Principles of the Code and provide a clear explanation in its reports, where it departs from the Code's Provisions*."

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

Yes, the board should report on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance.

As the transition to a low carbon economy continues, and there is greater scrutiny of company performance in this matter, including from investors, it is important that the Board demonstrates how climate-related risks and opportunities are incorporated into the company's overall strategy and wider governance.

However, we would underscore the point that the UK's existing regulatory architecture in the UK is already sufficient in supporting companies in communicating their climate ambitions and transition plans to their shareholders.

The FCA Listing Rules require premium-listed and standard-listed companies to make disclosures under the TCFD framework. These companies are required to include a statement in their annual report stating whether they have made disclosures consistent with the TCFD framework on a 'comply or explain' basis.

The UK Government also introduced mandatory reporting requirements in April 2022, whereby certain companies must make climate-related financial disclosures in the renamed non-financial and sustainability information statement (NFSI) within their strategic report. The Government has also announced that it will develop standards for company sustainability disclosures in the UK by July 2024 which are aligned to the International Sustainability Standards Board (ISSB).

The UK Code should therefore be signposting these existing requirements to companies, with the emphasis being on companies explaining how they approach disclosure – the UK Code should not issue further requirements which do not necessarily provide additional value to shareholders.

We would also add that other jurisdictions – such as the EU with its Corporate Sustainability Reporting Directive (CSRD) and the Corporate Due Diligence Directive (CSDDD) – have developed their own regulatory initiatives which seek to align with the sustainability-related standards issued by the ISSB. These all include disclosures related to the role of the Board including oversight, expertise, and sign-off on targets and performance.

We strongly believe that reporting on climate ambitions and transition planning is most valuable to investors when there are consistent global standards (i.e. the ISSB). We would not support any re-drafting of the UK Code which inadvertently undermines this objective.

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

Our only other comment on the other changes proposed to Section 1 relates to Code Provision 3 ("*Committee chairs should engage with shareholders on significant matters related to their areas of responsibility*").

In our experience, shareholders do not engage directly with board committee chairs other than for matters relating to remuneration, or if there is a governance issue. Any engagement is generally driven by shareholders' own priorities rather than in response to requests from companies. This requires two-way engagement, and companies should not be non-compliant with the Code provisions if shareholders do not respond to their engagement. We therefore recommend that Provision 3 is not amended, and should continue to state that Committee chairs should "seek engagement".

Section 2 – Division of responsibilities

Q4 Do you agree with the proposed change to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?

No, we do not think that the proposed change to Code Principle K in Section 3 – which makes the issue of significant external commitments an explicit part of board

performance reviews – will deliver a meaningful increase in the performance of either a board or a director.

We believe listed companies already assess whether a director has sufficient time to undertake their duties in different ways, usually on appointment, and then kept under constant review. This assessment is generally acknowledged in the letter of appointment, and subsequently monitored by virtue of actual time spent on company business throughout the financial year.

Existing mechanisms are in place to determine whether a director has sufficient time to undertake their role. A board performance review should focus squarely on the outcomes that the board and its directors are achieving (or not). While external commitments are not irrelevant, it will, in practice, be difficult to tangibly link a large number of external commitments to poor performance in the way that skills, experience and knowledge would be. We would therefore recommend removing the last sentence of Code Principle K.

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?

Companies already set out in their annual report the external commitments of individual directors. As we point out in our response to Q4, there are already mechanisms in place to monitor a director's time commitments.

We recommend that there is no requirement for a company to explain "how each director has sufficient time to undertake their role effectively in light of commitments to other organisations". It is not clear how a company can report meaningful information on an individual director's ability to manage their time. This is likely to lead to boilerplate reporting.

A broader comment we would make concerns the final sentence of Code Provision 15 ("Full-time executive directors should not take on more than one non-executive directorship in a FTSE 100 company or other significant appointment."). In our experience, company size is not a good proxy for likely time commitment; serving as a non-executive director of a FTSE 100 company might well be less time consuming than a smaller listed or private business that is dealing with wide-ranging challenges. Companies seek directors who are able to dedicate a commensurate amount of time for the situation at hand. Various factors will drive this; directors should be free to make these judgements on a case-by-case basis. We therefore recommend the removal of this sentence – and do not believe this will undermine the broader spirit or intention of the Code Provision or Code Principles E-H.

Section 3 – Composition, succession and evaluation

Q6 Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?

We would reiterate the overarching principle that we outlined in our response to Q2 that the UK Code should signpost to existing UK legislation so as to not unnecessarily duplicate and inadvertently raise confusion or costs for companies.

To maximise their impact and deliver on the intention to facilitate a more joined up approach to supporting the importance of diversity and inclusion in the composition of boards, executive management teams and succession plans, we believe it is important for the FRC to make the following amendments:

- Code Provision 18 should explicitly refer to the FCA Listing Rules (LR 9.8.6R(9) and LR 14.3.33R(1)) which require issuers in scope, as an ongoing listing obligation, to include a statement in their annual financial report setting out whether they have met specific board diversity targets for women and ethnic minority representation.

- The third bullet of Code Provision 24 should refer explicitly to DTR 7.2.8AR which requires in-scope companies to disclose in their corporate governance statement the diversity policy applied to their board, or to explain where no such diversity policy is applied.

- Code Provision 24 – and specifically the fourth bullet – should explicitly refer to LR 9.8.6R (10) and LR 14.3.33R (2) which require in-scope companies to publish numerical data on the sex or gender identity (i.e. not just "gender balance") and ethnic diversity of their board, senior board positions (Chair, CEO, SID and CFO) and executive management.

Making these changes – which principally align existing expectations set out in the Listing Rules and standardise language – will help reassure and clarify to companies that the FRC is not inadvertently creating duplicative or fragmented obligations.

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?

In principle, we support the new approach which captures the full suite of diversity protected characteristics (in line with the Equalities Act 2010), rather than listing various diversity characteristics as this will likely not be exhaustive and could be subject to change as societal norms evolve.

We support the FRC in seeking to promote all forms of diversity, however, we do consider that these changes go beyond the original scope of the Government’s

reform agenda and that there are flaws in the use of "non-protected characteristics including cognitive and personal strengths". Given that this phraseology is not widely used, we believe it is highly likely to lead to confusion and thus poor-quality reporting by companies. We believe there would be great value in simplifying the final sentence of Principle I, so that it reads “They should promote equal opportunity and contribute to a diverse and inclusive board and executive management team".

Q8 Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?

Provision 24 should not require companies to disclose either confidential and/or highly sensitive information relating to individuals in respect of their succession plans – but rather how they explain the approach the company is taking. Attempting to report on this will likely result in boilerplate reporting which does not provide any real value to shareholders and stakeholders.

As a broader point, the Code should also explicitly indicate what it means by “senior management” in the full body of the Code itself, rather than in a footnote. Our preferred option would be that throughout the Code refers only to one of “executive committee” or “executive team”. As we say in our response to Q6, this will align with the FCA’s Listing Rules and avoid confusion among companies and those who prepare annual reports.

Q9 Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?

Yes, we support the proposed adoption of the CGI recommendations from its Review of the effectiveness of independent board evaluation in the UK listed sector. The FRC should refrain from covering any particular areas in the guidance in addition to those set out by the CGI. This would risk unnecessarily overwhelming companies.

Section 4 – Audit, risk and internal audit

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

Yes, all Code companies should prepare an Audit and Assurance Policy (AAP) on a strictly ‘comply or explain’ basis. This will provide more transparency to a company’s reporting and disclosures, particularly with regards to sustainability.

An AAP will strengthen reporting governance. This is also aligned to the non-financial information statement, which companies publish in their Annual Report and Accounts (ARA), and which is considered good practice by the “Big 4” accountancy firms.

We believe that it would be helpful to confirm that the AAP only covers information included in the ARA. Extending the scope of the AAP beyond this could potentially result in a huge amount of work, the benefit of which would not appear to outweigh the significant cost and effort that would be involved.

The Code should also explicitly state that the AAP only covers “material” information included within the Annual Report and Accounts (ARA). A company’s ARA will typically include additional data points which may not be significant for users of the accounts, but are helpful in providing additional context and colour.

For example, this data might include commentary on the number or nature of certain products or customers. It might reference certain market data or estimates. It might include data relevant to a company’s workforce such as engagement survey participation rates or results. Requiring all such data points to fall under the remit of the AAP would either result in a huge cost and additional burden on issuers to obtain assurance on such information, or, more likely, result in their removal, to the detriment of the user.

In terms of engaging with shareholders, it is doubtful whether shareholders would wish to meaningfully engage with companies on the policy and therefore a mandated consultation may not work. Moreover, if they were to engage, there is a real possibility that they would simply request external assurance over all matters, in order to eliminate all risk. This would likely be costly and disproportionate and would ignore the fact that many companies have sophisticated internal audit functions (which shareholders will have much less exposure to than the board) which will be able to provide assurance over a number of matters likely to be included in the AAP.

Q11 Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?

Yes, we agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication.

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?

In our view, this question addresses two separate points: sustainability reporting and narrative reporting more broadly.

<u>Sustainability reporting</u>

We believe the whole board should ultimately be responsible for monitoring the integrity of sustainability reporting and for describing its work in this area in the annual report.

In our experience as a market operator, some companies do elect to establish specific sustainability committees, while others have incorporated such

responsibilities either to another committee (such as audit), or to the board as a whole.

Therefore, companies should have full discretion to decide for themselves whether an audit committee, the whole board itself or another committee assumes responsibility for sustainability reporting. Whichever route a company chooses, the most important thing is that those with responsibility have the appropriate skills and experience to fulfil this monitoring role.

<u>Narrative reporting</u>

On narrative reporting, we strongly believe that the audit committee's remit should be limited to the narrative commentary related to the financial performance of the company during the reporting period, as opposed to covering all commentary or wording in the annual report.

An audit committee should not be accountable for all narrative commentary, including, for example, the company strategy (which the whole board must own), market developments, product information, supplier developments, and employee volunteering. Delegating such responsibility to the audit committee is likely to inadvertently weaken existing accountability frameworks between a company board and shareholders, rather than enhance it.

We therefore believe that an important clarification must be made in the second bullet of Provision 26, so that the bullet reads [edits in **bold and strikethrough**]: "monitoring the integrity of narrative reporting, ~~**including sustainability matters,**~~ **as it relates to financial performance**, and reviewing any significant reporting judgement".

There is an important distinction between financial and non-financial information, which we agree should be in scope for consideration, and the narrative commentary that goes alongside it. Our proposed amendment will mitigate the fact that it will be difficult for a board committee to fulfil an obligation around narrative reporting. Even with the amendment – but certainly without it – the FRC would need to urgently clarify how such a committee would, for example, seek evidence to support every sentence included in the ARA.

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 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 acknowledge that the Government invited the FRC to amend the Code, in order to strengthen board accountability and reporting in relation to internal controls. This included a requirement for an explicit directors' statement about the effectiveness of the company's internal controls, including those over financial reporting, as well as wider operational and compliance risks and the basis for that assessment.

However, we consider there to be three shortcomings to the Code as currently drafted. These cover:

- **i.** The requirement that the board declare whether it can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period and up to the date of the annual report. (*see our response to Q14*).
- **ii.** The proposal to cover "reporting" instead of "financial" in the new Provision. *(see our response to Q15)*.
- **iii.** The proposed inclusion of operational and compliance controls.

In all three instances, companies will incur disproportionate and significant costs in order to meet the requirement which are more onerous than in other jurisdictions with whom the UK Government is committed to competing with at the global level and in the long-term. They are disproportionate to the risk they are seeking to mitigate. We believe there will in fact be a substantial risk that companies are dissuaded from seeking or maintaining a public listing in the UK, instead opting for alternative jurisdictions. This will then have negative knock-on impacts on the wider UK economy at a time of broader macroeconomic fragility.

We outline our views on (i) and (ii) in Q14 and Q15, respectively. In relation to item (iii), we are concerned about the complexity associated with the scoping and scaling of this requirement. Determining the inclusion of operational controls and establishing the criteria for materiality within an operational process would pose considerable challenges.

We believe the FRC needs to define the rationale more clearly behind incorporating "operational and compliance controls" in Provision 30, as we do not consider there to be any discernible demand from users of financial statements for their inclusion.

However, should the FRC decide to extend the scope beyond financial controls, we strongly recommend shifting the emphasis from "operational, reporting, and compliance controls" to a more focused approach on "financial and principal risk controls." Specifically addressing principal risks, as opposed to a broad reference to operational and compliance matters, would enable companies to concentrate their efforts on controls of utmost material significance. This adjustment would also align well with other components of the annual report and the Government's broader Audit and Corporate Governance reforms.

Irrespective of the path ultimately chosen, it will be imperative for the FRC to provide clear, comprehensive guidance regarding the definition of "material controls" and the specific elements to be encompassed within the board's declaration. Clarity in these matters is essential for facilitating compliance and understanding by companies.

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?

The board's declaration should be based on the date of the balance sheet. This would align with those entities which already follow Sarbanes Oxley requirements, and provide time for remediation if control weaknesses are identified and remediated during the reporting period.

We would strongly urge the FRC not to pursue continuous monitoring. At a time when a number of companies are considering moving their listing away from the UK, we believe such an approach would discourage both global and domestic companies from pursuing or maintaining a UK listing – a stated government objective – and diminish the UK's attractiveness as a destination for inward investment.

It would place a significant and disproportionate burden on companies and goes far beyond the current Sarbanes Oxley requirements. Given the FRC has stated that accompanying guidance on Risk Management and Internal Controls will soon be published (including clarification on definitions), we believe that not already having clearly defined what concepts such as "continuous" means would make it challenging for companies to assess the impact of this requirement.

In any case, regardless of how "continuous monitoring" is interpreted (be that real time monitoring, routine monthly monitoring, or something else), companies would face higher costs for little material benefit to investors and other stakeholders, especially when compared to the cost of implementation.

Continuous monitoring would also distort the roles and responsibilities between non-executive directors and executive management. For example, continuous monitoring of operational controls – which might cover everything from how new employees are onboarded through to cyber defence – would result in a significant reporting burden to, and time commitment from, the board. It is difficult to ascertain how non-executive directors could maintain their independence and objectivity, while also having time to consider broader strategic matters of the company.

Finally, it is also not clear whether, across the broader industry, there are sufficient numbers of qualified and experienced people to undertake the ongoing testing of controls that would be required. This is particularly true around operational and compliance controls; these areas will be less familiar with the procedures and testing performed for financial controls.

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?

No, "financial" should not be changed to "reporting" in the Code, as we consider the latter term to be very broad. We believe providing effective assurance over controls over narrative reporting would prove challenging.

That said, we recognise that the Annual Report includes non-financial data, such as operational KPIs and sustainability data which is used to determine the performance of the company in achieving its strategic objectives. To achieve the appropriate balance, we propose that the term 'numerical' or 'data' could be used instead to capture both financial and non-financial information, but exclude controls over narrative commentary.

As we explain in our response to Q12, we believe it would be appropriate for the Audit Committee to be responsible for the narrative commentary on financial performance but without needing to go as far as having to define, document and test the controls around the production of narrative commentary itself. Audit committees will normally already have processes to satisfy themselves that narrative commentary is fair, balanced and understandable and we do not believe that attempting to formalise a control framework around this process would add any value.

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?

We believe setting out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems is crucial, given many organisations already leverage existing frameworks such as COSO (Committee of Sponsoring Organizations).

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?

The FRC should align the definitional issues with other existing definitions of material weakness by other standards or guidelines, for example, from the Public Company Accounting Oversight Board (PCAOB); the Committee of Sponsoring Organizations (COSO); or the International Standard on Auditing (ISA (UK)).

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

We believe entities would benefit from guidance that sets out which circumstances external assurances might be considered appropriate.

Q19 Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?

Yes, we agree that current Provision 30 should be retained to maintain consistency across the Code.

Q20 Do you agree that all Code companies should continue to report on their future prospects?

Yes, we agree that all Code companies should continue to report on their future prospects.

Section 5 – Remuneration

Q21 Do you agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects?

Yes, we agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects.

Q22 Do the proposed revisions strengthen the links between remuneration policy and corporate performance?

In principle we believe it is important for companies to align management incentives and ESG objectives contained within remuneration policies with corporate performance. However, this should only be when such objectives are genuinely material to the company and its performance.

We therefore recommend referring to ESG objectives only in Provision 43, rather than in Principle P, so as to provide the maximum level of flexibility for companies to properly align incentives and strategy, and enable them to compete more effectively in the global market for senior talent.

We would also encourage the FRC to amend the word "outcomes" to "structures" within Principle P, as remuneration outcomes for individuals are determined by the remuneration structure and company performance.

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

Yes, we agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency.

However, the Code should be clarified as to whether disclosure of the use of malus and clawback is required over a five year look back period or just over the last reporting period (the final sentence of Provision 40 suggests the former, the last bullet of the same Provision the latter). Given remuneration reports remain available on the company’s website, a one year look back is sufficient.

Q24 Do you agree with the proposed changes to Provisions 40 and 41?

Yes, we agree with the proposed changes to Provisions 40 and 41; they will remove a lot of unnecessary boilerplate reporting from remuneration reports.

Q25 Should the reference to pay gaps and pay ratios be removed, or strengthened?

While access to gender pay 'gap' reports are increasing on company websites, we believe reference to pay gaps (or, as we prefer to say, pay equity), should still remain or be strengthened in order to hold organisations to account.

Other matters for consideration

Q26 Are there any areas of the Code which you consider require amendment or additional guidance, in support of the Government's White Paper on artificial intelligence?

There are no specific areas of the Code which require amendment or additional guidance at this specific time regarding artificial intelligence. Given such a complex and fast evolving topic could have far-reaching, long-term ramifications for how companies operate and govern themselves, we suggest the FRC, or, in due course, ARGA, commits to undertaking bespoke work with extensive engagement with companies and investors on this (e.g., through the FRC Lab) at a later date. LSEG will be happy to engage and contribute this work.

LSEG