Email – Deloitte LLP

5 December 2013

Dear Catherine,

We write in response to your request to provide comments on potential changes to the Code in relation to specific issues on executive remuneration. We have also considered other remuneration sections of the Code, particularly those in Schedule A: the design of performance-related remuneration for executive directors.

We fully support the FRC's position that changes should only be made to the Code where there is strong evidence demonstrating the need for change.

Extended clawback provisions

We agree that it would be helpful for the Code to adopt the terminology used in the Regulations and refer to 'recovery of sums paid' and 'withholding of sums to be paid'. In our view this provides more clarity than the terms 'clawback' and 'malus' which are often not well understood.

We also consider that the principle of being able to recover, or withhold, variable award in certain circumstances is an important one which supports the overall principle of avoiding payment for failure. However, we do not think the Code should be extended to include a "comply or explain" presumption that companies have provisions to recover or withhold variable pay. In our view, the binding vote on policy provides an opportunity for shareholders to register any concerns in relation to the recovery and withholding policy and therefore the current requirement to "consider" is sufficient. It is also worth bearing in mind that shareholders are more likely to be concerned with the circumstances in which these provisions may apply than simply knowing that provisions are in place.

Although a substantial number of companies have now introduced 'clawback' provisions there is a wide spread of practice in how these may be operated. In addition to the basic principles of either being able to recover sums already paid or to withhold sums not yet paid (and some companies include provisions to be able to operate both of these), the provisions may apply to the bonus or the long term plan or both, and may be operated in different circumstances ranging from misconduct and misstatement of results, to reputational damage, to the requirement for there to be sustained performance over a set period. The length of time over which any recovery may be applied also varies.

We believe that companies should determine the most appropriate provisions but that Schedule A could usefully make it clear that there are many circumstances in which recovery or withholding may be appropriate in order to encourage proper consideration of how these provisions should operate. We consider the wording of this provision could be extended along the lines of:

Consideration should be given to the use of provisions which allow companies to recover sums paid or to withhold sums to be paid in circumstances where there has been misconduct

or a misstatement of results. Consideration should also be given as to whether there are other circumstances where either recovery or withholding may be appropriate which may vary depending on the nature of the business.

Remuneration committee membership

We do not support changes to the code to deter this practice. As the data you include in the consultation paper shows, the practice is not widespread in any case. We do not believe it is appropriate to differentiate between directors in this way. Although we would question whether a full time executive has the time to take on the chairmanship of a committee, particularly that of a FTSE 100 company, there may be value in having the experience of an individual with executive experience on the committee. These are decisions that the company and its shareholders should be free to make.

In our opinion, the Code already contains sufficient provisions relating to the independence of non-executive directors, ensuring they are devoting sufficient time, performance evaluation of individuals and committees and provisions relating to conflicts of interest. We believe these should ensure that the constitution of the committee is appropriate and that it operates effectively.

It is also worth noting that investors have the ability to vote against the re-appointment of a particular director, or against the chairman of the remuneration committee, if there are significant concerns.

Voting

We do not support the inclusion of a specific requirement to report to the market where a company fails to obtain at least a substantial majority. The definition of 'substantial' will be different for different companies making it difficult to define in the code. This is also likely to cause an issue for companies with a single large shareholder. We also consider that it would be difficult to set an appropriate time period as companies need sufficient time to determine what the issues are and to make a considered response and in our opinion this process should not be forced to take place within a specific timescale.

Under the new regulations, where there was a significant percentage of votes against either remuneration resolution, companies are required to provide a summary of the reasons for those votes and any actions taken by the directors in response to those concerns in the Annual Remuneration Report. We believe this disclosure should be sufficient to provide a suitable and timely level of information to shareholders in relation to this issue.

Where the board considers that there has been a significant vote against or lack of support and there are plans to address this, the guidance from the GC100 suggests that companies may wish to comment on this in the RIS announcement of the results of the AGM and we believe best practice will begin to emerge over time in relation to what would typically be considered to be a 'substantial majority' and the disclosure of how companies respond to shareholder concerns. This could be monitored over time and amended in the next review of the Code if considered necessary.

Other remuneration sections in the Code

We have reviewed the design principles in Schedule A and while we believe that some of the items included here would no longer be common practice in the UK, we do believe these are still useful principles to include from the perspective of non-UK companies listing in the UK. For this reason we suggest that these are left unchanged.

The only area where we consider a useful change could be made is that of deferred remuneration. This talks about deferred remuneration not vesting, in normal circumstances, in less than three years. We note that some of the guidance currently in place and being developed in various parts of the financial services industry may not follow these principles. We wonder therefore whether it would be helpful to make reference to relevant guidance in particular sectors. The wording could be changed along the lines of:

Shares granted or other forms of deferred remuneration should not vest, in normal circumstances, and options should not be exercisable, in less than three years, or in accordance with any relevant industry regulatory requirement.

Please do not hesitate to contact me if you would like to discuss any of our comments in more detail.

Kind regards

Stephen

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