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Dear Ms Woods

Director's Remuneration - Consultation

Legal & General Investment Management (LGIM) has £443bn of asset under management as at 30 September 2013. Of this, £71bn is invested in UK equities, and LGIM has a holding in all companies in the FTSE All-Share. LGIM also has a dedicated team of corporate governance specialists that engage with listed companies on a daily basis on all aspects of governance. We encourage companies to instil good corporate behaviour and to adopt best practice as set out in the UK Corporate Governance Code. We believe that in order for the UK Code to remain best in class, it requires periodic review. As practitioners, we welcome this opportunity to pass on our knowledge in responding to this latest review on Director's Remuneration.

Extending Clawback Provisions

Is the current Code requirement sufficient, or should the Code include a comply or explain presumption that companies have provisions to recover and/or withhold variable pay?

We would say that a majority of companies that we have been engaging with over the past few years have introduced or are about to introduce some level of clawback mechanism into their long term incentive plan and their annual bonus plan. I think this practice has evolved over the years to become standard practice. That said, we believe there is merit in improving the current wording contained in the Code.

We have recently been made aware of a subtle difference between "clawback" which is said to apply to the recovery of monies after the individual has left the company and "malice". We understand that "malice" applies to withholding an award that has yet to be released. Equally we have become aware that some companies are adopting the term clawback in their contracts that apply under both circumstances

Should the Code adopt the terminology used in the Regulations and refer to "recovery of sums paid" and "withholding of sums to be paid"?

We think it would make sense to replicate the wording used in the Regulations

Should the Code specify the circumstances under which payments could be recovered and/or withheld? If so, what should these be?

We do not think that the Code should limit the scope of the discretion available to the non executive directors by specifying what the circumstances should be. If the FRC wishes to provide guidance on what circumstances clawback would apply we suggest caution. Any wording used should allow the Committee the widest level of discretion on how and when it can be applied.

Are their practical and/or legal considerations that would restrict the ability of companies to apply clawback arrangements in some circumstances?

The practical difficulties of application are where:

a) There is no contractual authority to apply clawback;
b) Cash is involved especially if it has been spent in good faith; and
c) If the person was suing the company for wrongful dismissal.

For these reasons, investors are now asking for additional holding periods post vesting, i.e. the use of deferred shares under the annual bonus arrangement and holding periods post vesting of LTIP awards.

Are changes to the Code required to deter the appointment of executive directors to the remuneration committee of other listed companies?

We believe that to create such a restriction would not be helpful to companies. Serving executives can provide useful input to the Committee.

In our experience, the issue hasn't necessarily been that a serving executive is a member of the Remuneration Committee but more a case of the attitude towards executive pay the person portrays. We believe this is a matter that should be dealt with on a case by case basis by investors. Investors can address concerns though engagement with the Chairman or by ultimately voting against the re-election of the individual. We do not believe that the Code should expressly ban executives to serve on other boards as a member of their Remuneration Committee.

Is an explicit requirement in the Code to report to the market in circumstances where a company fails to obtain at least a substantial majority in support of a resolution on remuneration needed in addition to what is already set out in the Regulations, the guidance and the Code?

We believe it would be helpful to codify a requirement for companies that receive less than 80% support for their remuneration related resolutions to make an RNS statement to acknowledge that they failed to achieve significant support from their shareholders. The announcement should include a commitment to communicate with shareholders within 6 months of the vote to ascertain the cause of any concern and to reach an amicable resolution.

Where a company has a significant shareholder either on its own or via concert party where together they hold in excess of 25% of the issued share capital the requirement should be varied to ensure that the voice of minority shareholders are taken into consideration. Under these circumstances a lower threshold should be set i.e. 65%. Alternatively if they receive less than 90% support when the votes of the majority shareholders are excluded.

We hope the above responses are helpful to the FRC in deterining whether further changes to the Code are necessary. If there is any aspect of our response that requires further clarification, I would be happy to respond to any questions.

I look forward to hearing about the outcome of the consultation in due course.

Yours sincerely

Angeli Benham
Corporate Governance Manager