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By email: remcon@frc.org.uk

Dear Ms Woods

Directors' Remuneration Consultation

RPMI Railpen is a subsidiary of RPMI and is authorised by the FCA to carry out investment management for the Railways Pension Trustee Company Limited (RPTCL), the corporate trustee of the Railways Pension Scheme and other UK railway industry pensions schemes with total assets of c.£20 billion. RPMI Railpen provides investment and pensions administration services to RPTCL for over 350,000 beneficiaries.

We welcome the opportunity to comment on the issues on which the Financial Reporting Council (FRC) seeks views on the UK Corporate Governance Code, further to the Government's enactment of legislation on voting and reporting on executive remuneration which came into force on 1st October 2013.

We have taken a close interest in this and I represented RPMI Railpen on the GC100 and Investor Group which published "Directors' Remuneration and Reporting Guidance" in September of this year which we believe provides helpful practical guidance to both companies and shareholders on best practice disclosure. Although the Code cannot be expected to endorse the GC100 and Investor Group Guidance explicitly, it may be helpful for the FRC to refer to it when drawing attention to other relevant material and guidance produced by outside parties in relation to the Code.

Extended 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 consider the current Code should have a "comply or explain" presumption that companies have provisions to recover and/or withhold variable pay.

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

Yes, to be consistent with the Regulations although the terms "recovery" and "withholding" are not explicitly defined 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 be prescriptive in this area and the onus should fall on members of Remuneration Committees to make the correct decisions when clawback is merited. However, the Remuneration Committee may wish to consider whether it is appropriate to confirm in the annual remuneration report that it has considered whether any recovery or withholding is appropriate, if none has been made in the reported year (see paragraphs 8(2) of the Regulations).

We state in our own UK Voting and Engagement policy that Remuneration Committees should retain discretion to reduce or reclaim payments if the performance achievements are subsequently found to have been unsustainable. We consider that there should be specific provision for 'clawback' policies that enable a company to reclaim compensation (bonuses and other incentives) that are awarded based on performance that was subsequently found to be erroneous, fraudulent or manipulated.

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

We acknowledge that there may be practical and/or legal considerations such as contractual obligations and it might be helpful if this was stated in the Code and that wherever possible, clawback should be pursued.

Remuneration Committee Membership

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

Given the evidence presented in the consultation, it does not seem that there is a strong linkage, in practice, between currently serving executive directors being members of Remuneration Committees and those individuals overseeing poor pay practices at FTSE 350 companies leading to high levels of shareholder dissent.

However, there is clearly a perception problem here and the evidence may change in the future. The onus should be on companies to explain why individual directors are the most appropriate persons to serve on their boards and what skills and experiences they bring.

One could argue that as long as the correct outcomes of pay plans are delivered and overseen by a robust Remuneration Committee, the make-up of that committee should be less relevant provided that the independence requirement is met.

This leads to a wider concern that we already have too small a gene pool of competent individuals who can serve as non-executives on boards and on board committees and we would not wish to see that gene pool be contracted further by such a change to the Code.

Votes Against Remuneration Resolutions

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 think an explicit requirement in the Code of this nature may be appropriate.

If yes, should the Code:

- **set criteria for determining what constitutes a 'significant percentage';**

Yes. We agree with the GC100 and Investor Working Group general guidance on this point that votes against in excess of 20% should be deemed as significant in this regard.

- **specify a time period within which companies should report on discussions with shareholders;**

It would have to be no later than the following year's remuneration report to the AGM but we have reservations about setting a specific deadline which could lead to unintended consequences.

and/or

- **specify the means by which companies should report to the market and, if so, by what method?**

The RIS announcement would be the most appropriate method of communicating to the market.

Are there any practical difficulties for companies in identifying and/or engaging with shareholders that voted against the remuneration resolution/s?

Companies are better placed to answer this question but we note various practical difficulties in both identifying and engaging with shareholders who have voted against the remuneration resolution/s:

- Not all shareholders who vote against will inform the Company in advance or after the AGM;
- Not all shareholders want to engage on remuneration issues even if they do vote against;
- Overseas shareholders may be difficult to identify on the shareholder register;
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- Underlying beneficial owners of shares such as pension funds may not be easily identifiable if they do not have their own nominee name and account;

Other possible changes

Is the Code compatible with the Regulations? Are there any overlapping provisions in the Code that are now redundant and could be removed?

Yes, we consider that the Code is compatible with the Regulations.

Should the Code continue to address these three broad areas? If so, do any of them need to be revised in the light of developments in market practice?

The Code should continue to address the three broad areas of remuneration as set out in the Appendix. We would also think it is worth considering in the section on the design of performance-related remuneration adding a reference to remuneration linking to the long-term strategy of the company such that the pay structure drives the delivery of that strategy.

We trust you find our comments helpful and please do not hesitate to contact me should you wish to discuss our response further.

Yours sincerely

Frank Curtiss
Head of Corporate Governance