Ms Catherine Woods
Financial Reporting Council
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Aldwych House
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6 December 2013

Dear Ms Woods

October 2013: Directors' Remuneration – Consultation Document

We are responding to the invitation to provide views on the above consultation. PwC welcomes the opportunity to respond to this consultation. As remuneration advisors to many of the UK's leading companies we support initiatives to drive improved corporate governance of directors' remuneration.

However, we do not believe any of the changes proposed in this Consultation are necessary because we consider that the existing framework, including the UK Corporate Governance Code ('the Code'), the Enterprise & Regulatory Reform Act, the recently revised remuneration reporting regulations ('the Regulations') and GC100 and investor guidelines, is adequate to:

- manage risk;
- preserve the independence of remuneration committees; and
- maintain accountability to shareholders in respect of directors' remuneration.

Our responses to each of the consultation questions are set out in the Appendix to this letter.

If you would like to discuss any of these points in more detail, please contact me (on 020 7804 9264) or Tom Gosling (on 020 7212 3973).

Yours sincerely

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APPENDIX - Detailed response to the questions posed by the Consultation

Extended clawback provisions

Q1: 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?

Yes – the current Code requirement is sufficient. We don't consider that it is necessary for there to be a "comply or explain" provision in the Code presuming that companies will have provisions to recover and/or withhold variable pay because it is important that companies have the flexibility to design their remuneration arrangements to meet the needs of their businesses. The existing paragraph in Schedule A encourages companies to consider whether to introduce:

"provisions that permit the company to reclaim variable components in exceptional circumstances of misstatement or misconduct."

In our experience, companies have adopted clawback or malus provisions where there is a business justification for doing so. We do not believe that the Code should mandate the structure of executive remuneration; this should be left to the remuneration committee's discretion.

However, as discussed later in response to Q3, the circumstances specified in Schedule A are very limited.

Q2: 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 – it would be beneficial to align the terminology in the Code with that in the Regulations. It is important to differentiate between the recovery of sums that have already been paid and the withholding of sums to be paid - the former potentially being more difficult to implement in practice than the latter.

Q3: Should the Code specify the circumstances under which payments could be recovered and/or withheld? If so, what should these be?

No – we do not consider that the Code should specify the circumstances in which payments could be recovered and/or withheld. The existing wording of Schedule A is very narrow in this respect, being limited to circumstances of misstatement or misconduct. There is a risk that the specified circumstances are interpreted as the only scenarios in which clawback should be operated and, as it would be difficult to anticipate every circumstance in which some form of clawback should be considered and these may not be the same for every company, we recommend that the references to misstatement or misconduct be removed from Schedule A of the Code. The way in which clawback should be implemented will vary from company to company and will also vary depending on the nature of the business and the design of the incentive arrangements.

We believe that this is an area in which remuneration committees should exercise judgement.

Q4: Are there practical and/or legal considerations that would restrict the ability of companies to apply clawback arrangements in some circumstances?

Yes – there is a potential legal and practical difficulty in recovering amounts that have already been paid to or have vested in employees.

Non-Executive Directors who are also executive directors serving on the remuneration committee

Q5: Are changes to the Code required to deter the appointment of executive directors to the remuneration committees of other listed companies?

No – we believe that the presence of executive directors from different companies on remuneration committees adds to the diversity of view and can keep the committee in touch with the current issues in business from an executive perspective. We are not persuaded that there is any evidence of mutuality of benefit between executives and non-executives who hold different positions in other companies and executives are unlikely to ever represent a majority on another company's remuneration committee.

We understand that one of the Government's concerns is the limited pool of individuals who are considered for non-executive posts. To deter the appointment of executives from other companies as non-executives would simply exacerbate the shortage of available candidates.

Q6: 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?

No – the Regulations are clear that, where there was a "significant percentage" of votes against either resolution at the last AGM, the Annual Report on Remuneration should include:

"a summary of the reasons for those votes, as far as known to the directors, and any actions taken by the directors in response to those concerns."

The GC100 guidance suggests that companies consider votes against in excess of 20% as being "significant".

All shareholders have access to the outcome of votes through RIS announcements under the shareholder rights directive, and we consider that communication of the outcome in the next remuneration report of subsequent shareholder engagement after a significant vote against, as prescribed by the Regulations, is sufficient. There is no similar requirement, where other shareholder resolutions give rise to a significant negative vote, to issue a report to the market and we consider that this would be over- emphasising the importance of this vote as compared to other votes.

The reasons behind a negative vote on a remuneration report are sometimes not well understood by the company until some time after the event; or there may be a number of different reasons, some of which are historic by the time the report is published. We do not believe that there is any value to be gained from a report to the market in these circumstances.

Actions for companies that fail to obtain a substantial majority in support of a resolution on remuneration

Q7: If yes, should the Code:

- **Set criteria for determining what constitutes a "significant percentage";**
- **Specify a time period within which companies should report on discussions with shareholders; and/or**
- **Specify the means by which companies should report to the market and, if so, by what method.**

N/A

Other matters

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

The extent to which the Code deals with matters of disclosure of directors' remuneration is limited and typically in areas not covered by the Regulations (eg fees earned by executive from external non-executive director appointments). Consequently we do not consider that there are provisions that are now redundant which could be removed.

Should the Code continue to address these three broad areas (process for setting directors' remuneration; disclosure of remuneration committee terms; structure of executive remuneration? If so, do any of them need to be revised in the light of developments in market practice?

Schedule A (setting out the structure of executive remuneration) was drafted at a time when market value options were commonplace. Currently, the use of market value options is limited. The sentence "Traditional share options should be weighed against other kinds of long-term incentive schemes" is probably no longer required.