



INSIGHTFUL INDEPENDENT IMMEDIATE

Catherine Woods
Financial Reporting Council
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London WC2B 4HN

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Dear Ms Woods,

Kepler Associates is pleased to have the opportunity to respond to the FRC Consultation on Directors' Remuneration.

Kepler Associates is one of the UK's leading remuneration advisers, owned 100% by its partners and employees. Our clients are mainly publicly-listed and private companies that wish to use incentive compensation as a source of competitive advantage. They include over 50 of the FTSE350 as well as a number of other listed companies in the UK and c.60 countries around the world, together with a number of mutuals, public sector bodies and charities.

Below we respond to each of the three issues which your Consultation Document seeks views on.

Extended Clawback Provisions

We believe there should be an *expectation* that companies adopt provisions for malus and/or clawback. A 'comply or explain' basis is reasonable as the ease with which malus/clawback can be applied depends on the country in which the executive is employed. In our experience, most companies that have implemented malus or clawback would apply these powers in either cases of material financial misstatement; or in cases where an employee is deemed to have materially damaged the interests of the Group as a result of reckless, negligent or wilful actions or inappropriate behaviour. We believe Remuneration Committees should be free to apply clawback and malus in circumstances they identify as appropriate to their particular circumstances (e.g. for legal jurisdictions in which they operate), and that standardising these circumstances in the Code is unnecessary. To help ensure clawback is legally enforceable, it will be important for a Remuneration Committee to specify the circumstances under which it could be applied – the selection of these circumstances should be at the discretion of the Company rather than be prescribed by the Code.

We note that currently the PRA Remuneration Code requires only the application of malus; however it intends to engage in a consultation process to determine the specific circumstances in which clawback may be required. CRD IV envisages the use of both malus and clawback. Standardisation across these different Codes would be helpful.

Remuneration Committee Membership

We believe that the Code should not deter the appointment of Executive Directors to the Remuneration Committees of other listed companies, as committees benefit from their experience. In particular up-to-date knowledge of relevant talent markets and related trends is helpful to Committee deliberations.

In deciding which independent directors are best placed to sit on the Remuneration Committee, a Board will consider a range of factors, including relevant experience and the time commitment required. We understand that this role may be more easily filled by an individual without a full-time role elsewhere; however precluding executive directors through the Code would restrict this choice unduly, and therefore possibly not be helpful. We have not seen any evidence of executive directors behaving in the way implied by this question.

Vote against the remuneration resolutions

We do not believe an additional requirement is required in the Code for companies to report to the market if they fail to obtain at least a substantial majority in support of a resolution on remuneration, as this is already provided for in the Regulations.

However, should this requirement be imposed in the Code we believe a 'significant percentage' of votes against could be defined as anything greater than 25%, as Remuneration Committees generally raise particular concerns where this threshold is reached (since July 2012 less than 5% of FTSE 350 companies had votes of >25% against their Remuneration Report). Furthermore, if specified in the Code, we believe companies should have until the next annual report to report to the market in order to be able to respond to shareholders in a considered way.

If you would like to discuss any aspects of our response please contact me on 020 7930 7730.

Yours sincerely



Gordon Clark
Managing Partner