Aviva Response to FRC Consultation on Executive Remuneration

As the UK's largest insurer and owner of a global asset management business with assets under management in excess of £370 billion, Aviva is able to speak as both the owner of, and investor of capital in the market. We welcome the opportunity to respond to the FRC's consultation.

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?

Aviva supports the principles of clawback and malus. We have arrangements for the application of malus in our Long Term Incentive Plan (LTIP), deferred bonus plans, and in our conditional share awards (CSAs) when it is necessary to make them to new hires as part of a recruitment buyout (within our agreed policy). In addition, despite practical difficulties, we apply clawback to these CSAs. Schedule A of the Code already requires companies to consider clawback arrangements in designing remuneration policy and so we feel the current requirement is sufficient.

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

The Code should reflect the wording of the regulations for clarity that such a policy could cover clawback or malus arrangements rather than merely clawback as the Code currently appears to suggest.

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

The code currently states that:

Consideration should be given to the use of provisions that permit the company to reclaim variable components in exceptional circumstances of misstatement or misconduct.

The Code was designed to be principles-based and set out standards of good practice. Aviva believes that the Code should remain principles-based and not provide prescriptive circumstances in which payments could be recovered and/or withheld. Specifying such circumstances could have the unintended consequence of inhibiting Remuneration Committees from withholding or recovering pay if such a list is not exhaustive enough.

Aviva would rather see the exceptional circumstances definition widened to cover not only misstatement or misconduct but also reputational issues, for example serious environmental

damage or human rights abuse. This would enable Remuneration Committees to exercise common sense within the broad principles of the Code.

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

There are several issues concerning clawback arrangements including practicalities of contacting and reclaiming pay from former employees, tax implications and legal considerations in attempting to seek repayment of monies already paid to individuals.

Arrangements that dictate that awards that have not vested will lapse wholly or in part if they consider that the individual has engaged in misconduct, misstatement or behaved in such a way as to seriously damage the reputation of the company create far fewer legal and practical issues.

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

We see no reason to change the Code requirements on the composition of the remuneration committee. The FRC's own analysis does not suggest that there is any correlation between the remuneration committee including individuals who are also executive directors on boards of other companies and levels of shareholder dissent on their remuneration report. Indeed, for FTSE 250 companies, levels of shareholder dissent are in most cases lower amongst those companies with remuneration committees including an executive director,

In our experience, executive directors bring good practice and learning from other companies that they can share with the remuneration committee and that experience is important both from a company and an investor perspective.

Non Executive Directors are required to fulfil their directors' duties, which should be sufficient to ensure those on the remuneration committee are fulfilling their commitment to shareholders.

As an investor we would take a view on how balanced and diverse the board is; the number of individuals holding executive directorships elsewhere is not a concern so long as there is sufficient independence, diversity of age, experience, skills, gender, geographical spread and length of tenure on the board of the company concerned.

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 consider the GC100 guidance to be sufficient.

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 monitor developments in market practice and review these issues again when the Code is next being revised.

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