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Dear Ms Woods

Financial Reporting Council – Directors' Remuneration – October 2013

Thank you for the opportunity to comment on the consultation paper.

Capita Asset Services, through the Shareholder Solutions and Corporate Solutions businesses, provide share registration and value-added services to over 7 million shareholders on behalf of more than 1,500 companies in the UK and Ireland. We are responsible for share registers and share registration, corporate actions, share plans, and company secretarial support across a base of clients that range from small or recently floated to large multinationals.

Shareholder Solutions also provides a custody and settlement operation supporting overseas companies listing on the UK market and a share dealing service primarily aimed at shareholders in its client companies. Some of these client companies are based in other EU countries. Shareholder Solutions is part of a FTSE 100 organisation, Capita plc.

Also, Capita Company Secretarial Services (part of our Corporate Solutions business) is the largest professional services company secretarial team in the UK. We provide a full spectrum of company secretarial and corporate governance services to over 100 external client companies and to the Capita plc group. Our clients include high profile FTSE 100 and 250 companies, smaller main market companies and listed investment companies.

The major impact of the proposed changes that may arise from the paper will be on the companies we act for in the company secretarial capacity rather than on us as Registrars. As

agents of our client companies, we work very closely with them in relation to many of the aspects of their corporate governance.

Below are the responses to the specific questions set out in the consultation.

1. Extended clawback provisions

1.1 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?

Making clawback the subject of comply or explain would seem to give the message that all companies should have clawback provisions. Explaining that you do not have it would fairly quickly lead to the response - why not? It should not be assumed that it is a needed or desirable director contract provision for all companies. The current Code invites companies to consider "the use of provisions that permit the company to reclaim variable components…". Such provisions are used where considered necessary and the Code allows companies to explain why they do or do not use clawback. Not every UK company has a history of financial or governance transgressions that might require the imposition and use of clawback terms, therefore changing the Code seems unnecessary.

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

It would be helpful for the terminology to be consistent with the Regulations so we would support this proposal.

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

It would not be appropriate for the Code to specify when clawback should apply. Circumstances vary between sectors and from company to company so attempting to specify the circumstances where payments could be recovered would, we believe, be extremely difficult to achieve at a practical level.

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

Once employees have left an organisation recovering monies does become more difficult. Clearly there is a contractual obligation if that was put in place when the individual was in post but there will also be older contracts where recovery would be legally difficult.

2. Remuneration committee membership

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

No. In relation to remuneration committee membership, the consultation paper contains a table in paragraph 12 showing that the percentage of FTSE 100 and FTSE 250 companies whose remuneration committees included non-executive directors, who were also executive

directors of other companies, has been reducing since 2003 from 45% and 42% to 31% and 15%, respectively. There is also a table in paragraph 13 showing that the presence of an executive director on the remuneration committee does not appear to have any impact or influence on the level of shareholder dissent in terms of votes against the remuneration report, which appears to support the view that no Code changes are necessary to address this issue.

There should be no effort to deter executive directors of other companies from being appointed to remuneration committees as non-executive directors. Remuneration committee members who are executives from other companies bring a wealth of knowledge and understanding that can help the development of other organisations as well as providing personal development for the individuals concerned. These appointments provide spin off benefits for both companies and are likely to enhance the pool of non-executive talent available. Executives are also more likely to have a better understanding of remuneration issues.

If executive director non-executives were excluded from remuneration committee membership this would create practical problems associated with not being able to use or rotate all non-executives onto the various Board committees as well as creating a "second class" tier of non-executives who would only be considered independent for certain issues. This sort of approach could create various corporate governance "nightmares" for companies when there appears to be no real evidence to support the view that the influence of these directors is "inflationary" or unwelcome by shareholders.

3. Votes against the remuneration report

3.1 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?

Different shareholders may have different concerns and issues which drive them to vote against the remuneration resolution. The result of a variety of shareholder concerns may come together to produce the reason (or reasons) why a substantial majority vote in favour of the remuneration resolution is not achieved. Having to explain exactly what has happened when this occurs would, we believe, be extremely difficult for the company involved because of the many variables and different company circumstances that might prevail. For this reason we do not believe that the Code should include an explicit requirement for companies to explain a failure to receive a substantial vote in favour of its remuneration resolution.

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?**

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

In connection with the points above, below are a couple of practical matters that would have to be taken into account:-

- Setting a standard criteria for a "significant percentage" would be difficult because it would have to take account of the different shareholder profiles of companies. In some instances, a vote against by one large shareholder could result in a significant percentage. If companies require guidance there is already information available to help them (GC100 for example).
- What would be a reasonable time period for a report to be made after the AGM if the shareholders have not engaged with the company in advance of voting? It may take some time to understand the shareholder concerns (if they respond and engage with the company at all). It may be necessary for the Remuneration Committee and even the Board to consider what is reported and this may take time to organise.

The companies should be able to report the information available to them from their internal investigations and from those shareholders who have engaged with them at the appropriate time for them. Shareholders have opportunities to challenge the company approach if they disagree with how the matter is handled.

4. Other possible changes

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

No changes required.

4.2 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?

No changes required.

We have responded to the areas of the discussion paper where we have current knowledge and experience. We would be happy to discuss our comments further if required.

Yours sincerely

Phil Kershaw
Senior Manager – Industry and New Products