



Mr Chris Hodge
Financial Reporting Council
Fifth Floor
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Ref: TECH-CDR-737

14 March 2008

Dear Chris

Financial Reporting Council 2007 Review of The Combined Code
Consultation on proposed changes to the Code

I write to convey ACCA's views on the FRC's consultation on Proposed Changes to the Combined Code.

We note that both of the proposed changes are to Provisions of the Code and companies therefore have the choice either to comply with the provision or explain why they have not.

Chairing more than one FTSE100 company

We agree with the intention of avoiding restricting the supply of skilled and experienced people willing and able to serve as chairman of large listed companies. We are concerned, however, with what seems to be an implied acceptance that there are fewer than one hundred people who have the necessary skills and experience. There seems to us a risk that the proposed change could have the effect that in future the largest hundred companies will have significantly fewer than a hundred individual chairmen.

Nevertheless, we support the proposed change as we agree it can be argued that the present provision is unnecessarily prescriptive. We also consider that shareholders have a right to have the best chairman for the job. We trust however that the FRC will monitor the actual number of individuals chairing our largest one hundred companies and consult further on what action to take, if any, if there is (i) a significant reduction in the total number of individual chairmen and/or (ii) a trend of individuals chairing more than two companies.

On a related matter, ACCA has expressed its concern in the past to the FRC (see for example our response in April 2007 to your last consultation on the Code) that the requirement for independent non-executive directors to make up at least 50% of boards could have the, presumably unintended, consequence that boards would have fewer executive directors. It now seems to be recognised that there is a trend for the number, and not just the proportion, of executive directors on boards to decrease. We think this an unwelcome trend, it risks making non-executive directors more remote from the business and more dependent for information on the chief executive and finance director.

Company chairmen sitting on audit committee for smaller companies
We support the FRC proposal to allow the company chairman to be a member of the audit committee provided that (i) he/she was considered independent at the time of appointment as chairman and (ii) that the company chairman does not chair the audit committee.

The proposed change does appear to us slightly ambiguous. It does not seem clear if the company chairman can be one of the minimum of two required audit committee members or if the company chairman would be a third member.

We are aware that it is the practice in some organisations for both the chairman and the chief executive routinely to attend audit committee meetings. The presence of what are normally the two most powerful members of the board can have an inhibiting effect on the independent and objective role of audit committees. We would invite the FRC to consider whether it would wish either to discourage the chief executive from routinely attending audit committee meetings particularly if the company chairman is a member or, if both normally attend the meeting, encouraging the practice of having a part of each meeting where they are not present.

Overlap with FSA Corporate Governance Rules

We agree it would be helpful to reference the Code to the Rules. On the specific point about disclosure requirements, we repeat our request that the published disclosure requirements highlight the requirement for companies to disclose how they apply the Code principles. Many would agree that performance is more important than compliance and so disclosure of how companies apply the principles is as, if not more, important than disclosure of whether or not they comply with provisions.

The Code presently says in 'Schedule C Disclosure of Governance Arrangements' that one of the disclosure requirements is for "a statement of how the listed company has applied the principles set out in Section 1 of the Combined Code, in a manner that would enable shareholders to evaluate how the principles have been applied". The schedule then goes on to list each of the disclosure requirements contained in the Code provisions. We suggest a minor amendment: replace 'the principles' by 'each of the principles and supporting principles'. This should encourage companies to report more fully and on how they apply all the principles.

Finally, we note the recent media attention given to the appointment of Sir Stuart Rose as Executive Chairman of Marks and Spencer plc. Companies have to report, in their annual reports, how they have applied the Code principles and whether or not they have complied with the Code provisions, or explain why not. As far as we can tell, a full explanation of the reasons for departing from the Code was not made public when the announcement of Sir Stuart's appointment was made. We suggest that when a company does something during a year that goes against the Code in a significant way it should give a public explanation at the time rather than wait until the annual report. No doubt explanations are being given in briefings for major shareholders: however an explanation for any departure from the Code should appear on the company website for all shareholders to see. We invite the FRC to consider adding this to the requirements for disclosure.

Please let me know if you have any questions on, or would like to discuss, any of our comments above.

Yours sincerely

A handwritten signature in black ink that reads 'Paul Moxey' in a cursive, slightly slanted script.

Paul Moxey

Head of Corporate Governance and Risk Management