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Dear Chris

FRC consultation on Amendments to the Combined Code

We are pleased to respond to your consultation on proposed changes to the Combined Code.

Chairing more than one FTSE 100 company

We are content with the FRC's proposed amendment to Code provision A.4.3.

We are also content with the retention of the remaining existing wording of A.4.3 without further addition or amendment.

Company Chairman sitting on audit committee for smaller companies

We also support the amendment to Code provision C.3.1 to allow a company chairman of a listed company outside FTSE 350 to be a member of, but not chair, the audit committee if the person was considered independent on appointment.

We agree that his membership should be additional to, and not in replacement of either of, the minimum of two independent NEDs, who should serve on such an audit committee.



Revised Preamble to further explain the Comply or Explain philosophy

We also support in principle the intention of the FRC to give further explanation of the Comply or Explain philosophy in a revised Preamble to the Code, and with a view to assisting and encouraging companies to provide meaningful explanations of any divergences from the Code.

We would expect any significant divergences to be the subject of discussion and broad agreement and understanding between the company and its principal shareholders.

The revised Preamble could usefully emphasise that it is not Comply or Else, and that companies are free to diverge from the Code, if they properly explain the reasons for doing so. This should normally be perfectly acceptable to their shareholders and the market, particularly if companies are in regular contact with their major shareholders. Shareholders who are unhappy for any reason can seek to persuade the company to adopt a different approach, and if they are still not content, they have the possibility of disposing of their shareholding.

Some CBI members consider that these concepts would be better understood if the principle was “Apply or Explain” rather than “Comply or Explain”. However, the latter phrase is now well entrenched in reference to the Combined Code, and is used elsewhere including in Europe as a regulatory approach in reference to compliance with codes or other matters.

We look forward to having sight of the proposed revised Preamble, so that we can offer any further comments.

Overlap with FSA Corporate Governance Rules

We note the comments made, and we support the proposals for footnotes and appropriate cross-references.

Other Matters

- FSA Listing Rule LR 9.8.6 (5) - Comment on application of Code Principles

In the FSA consultation on the Company Reporting Directive for a corporate governance statement, the FSA has raised the possibility of repeal of the above Listing Rule requiring companies to state in their Combined Code compliance statement how they have applied the Principles accompanying the various Code provisions, and refer to responses to the FRC consultation last year reviewing the impact of the Combined Code.

In the CBI response to the FRC (attached), we did raise the point of seeking clarity that it was not the intention of this Listing Rule that companies should have to state how they have applied each and every Principle (which with Supporting Principles total about 60 altogether), but companies could comment generally regarding the Principles as a whole, and comment specifically on any particular Principles if they wished.

In Paragraph 4 of the Preamble to the 2006 version of the Combined Code, it is stated as follows :

“ The Code contains main and supporting principles and provisions. The Listing Rules require listed companies to make a disclosure statement in two parts in relation to the Code. In the first part of the statement, the company has to report on how it applies the principles in the Code. This covers both main and supporting principles. The form and content of this part of the statement are not prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach.

In the second part of the statement the company has either to confirm that it complies with the Code’s provisions or – where it does not – to provide an explanation. This ‘comply or explain’ approach has been in operation for over ten years and the flexibility it offers has been widely welcomed both by company boards and by investors. It is for shareholders and others to evaluate the company’s statement.”

Most CBI members support maintaining a requirement for a statement as to how a company has applied the Principles because it offers the opportunity for boards to explain their company’s approach to corporate governance, and will be useful to their shareholders.

However the burden of the Listing Rule has arisen from the significant number of new and supporting Principles introduced with the 2003 version of the Code, whilst the Listing Rule obligation appears to have remained the same.

We therefore continue to believe it appropriate, rather than deletion of the Listing Rule 9.8.6(5), that the objective of the Listing Rule is retained, and the statements contained in the Preamble to the Combined Code could form the basis of guidance by the FSA in respect of the Listing Rule.

We will be pleased to discuss this further with you and the FSA, and the appropriate form of guidance, and whether some amendment to the wording of the Listing Rule itself is also appropriate to make the position clearer.

Yours sincerely



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CBI Company Affairs