



20 March 2008

Submitted by email to:
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Dear Chris

FRC – Combined Code

The Institute of Chartered Secretaries and Administrators (ICSA) is an international professional body with some 44,000 members and 28,000 students in over 70 countries worldwide fulfilling a variety of roles in a wide range of different types and sizes of organisations. As many of our members are listed plcs they are required to follow the Combined Code (the “Code”) and therefore any amendments to the Code are of particular interest.

Preamble

We are pleased to have the opportunity to respond to the FSA’s consultation on proposed changes to the Combined Code. Our members usually prefer to avoid widespread changes to the code however with regards the two proposed changes our members have expressed their support.

Please find to follow our responses to the proposed changes raised in your consultation document:

- P1 The removal of the restriction in provision A.4.3 on an individual chairing more than one FTSE 100 company.**
- R1: Our members are content to support the above proposed amendment to the Code and the revised wording.
- P2 For listed companies outside the FTSE 350, amending provision C.3.1 to allow the company chairman to be a member of, but not chair, the audit committee provided he or she was considered independent on appointment.**
- R2: We support the proposed changes to the above provision of the Code and the suggested wording. We also agree that the chairman’s membership to the audit committee should be in addition to, and not in replacement of, the minimum requirement of two independent NEDs.
- P3 Revised Preamble to further explain the Comply or Explain philosophy**
- R3 We support the FRC’s intention to revise and provide further guidance regarding the Comply or

Explain provision in the Code's Preamble. Some parties have expressed a view that perhaps the Comply or Explain provision should be amended to Apply or Explain as this would avoid the perception of a Comply or Else regime. However it is acknowledged that the term is well known and used throughout UK and Europe and to change might be difficult if not confusing. The purpose of the Preamble should be to continue to reinforce important messages regarding the Code such as encouraging companies to engage with shareholders by providing meaningful explanations for divergences from the Code. It has been repeated ad nauseam that the Code should not be a tick box exercise yet companies often feel they will be vilified by shareholders and the market merely because they are unable to or choose not to comply with some of the Code. Companies should be able to feel they can diverge from the Code provided they give adequate reasons for doing so. If companies actively engage with shareholders and provide meaningful explanations, shareholders can respond with suggested alternative approaches if an action is disliked they can ultimately sell their shares if a suitable resolution is not provided. We look forward to seeing the proposed revised Preamble wording in due course.

P4 Overlap with FSA Corporate Governance Rules

R4 With regards to the above and the comments made therein, we agree with these and support the proposals with regards the inclusion of footnotes detailing where the Code and Rules overlap, and the updating of Schedule C to list all corporate governance disclosure requirements in one place.

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

In its response to this Combined Code consultation the CBI have referred to the FSA consultation on the Company Reporting Directive, where the FSA raised the possibility of repealing 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.

The CBI raised 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. The CBI refer to paragraph 4 of the Preamble to the 2006 version of the Combined Code:

“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.”

They go on to explain that 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. The CBI believe it appropriate, rather than deleting Listing Rule 9.8.6(5), instead the objective of it should be retained and suggested that the Preamble statements to the Combined Code could form the basis of guidance by the FSA in respect of the Listing Rule. This would retain the requirement for a statement as to how a company has applied the Principles in general and offers an opportunity to boards to explain their company's approach to

corporate governance which is useful to shareholders. We believe this to be a sensible suggestion.

Thank you once again for allowing us this opportunity to respond to this consultation, if we can be of any further assistance we would be more than happy to assist.

Yours Sincerely

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