

Mr Chris Hodge
Financial Reporting Council
5th Floor
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12th March 2008

Dear Chris

**2007 Review of the Combined Code: Consultation on proposed changes to the Code
Response from Railpen Investments**

Railpen Investments is a subsidiary of rpm, a UK pensions administration firm which runs the Railways Pension Scheme and other railway pension schemes on behalf of the trustee, Railways Pension Trustee Company Limited. Railpen Investments oversees the investment of assets worth approximately £20 billion and has been active on corporate governance since our UK voting policy was introduced in 1992.

We very much welcome this opportunity to offer our views on the proposed changes to the UK's Combined Code. We are in agreement that the Code is working well and that there is no need for a major overhaul. However, the two areas that are identified for consideration in the consultation appear to be the most contentious areas of the Code in its current form and we are grateful for the debate that this consultation will no doubt generate on these issues. For our part, our views are as follows:

1) to remove the restriction in provision A.4.3 on an individual chairing more than one FTSE 100 company;

We consider that this restriction should be removed, as it is being perceived as a prescriptive rule instead of the more flexible approach that the Combined Code seeks to endorse. In our opinion, it is for the Nominations Committee to determine whether an individual can carry out the duties expected of them, taking into account any other commitments that individual may have. However, an important caveat to the removal of this provision is that robust explanations will be expected should an individual have numerous positions that may impinge on his / her time commitments. We note that the Combined Code already envisages that Nominations Committee should take this into account.

2) for listed companies outside the FTSE 350, to amend provision C.3.1 to allow the company chairman to sit on the audit committee where he or she was considered independent on appointment.

We do not agree that special derogation is necessary for smaller companies outside the FTSE 350 in complying with the provision that the independent company chairman should not

Our vision is to be the provider of choice for pension services.

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sit on the audit committee. There are three strands in our objection to such an amendment:

- (i) it is difficult to argue for special provisions to be applied to smaller companies simply because they are smaller companies. It would seem to us that a better differentiation would be whether the Company is listed on the main market. Certainly, we consider that AIM listed companies should have more relaxed rules on corporate governance whilst keeping within the main tenets of accountability, disclosure, transparency and responsibility. However, compliance, or otherwise with the Combined Code, as an appendix to the Listing Rules, is a major requirement for which to achieve a full listing and we consider it would be detrimental to the standards inherent within listed companies if special provisions were applied dependent upon the size of a company. An extension of this concern is that inevitably, if the provision is relaxed, there may be times where non-independent chairman of smaller companies serve on the audit committee, either because the Company disagrees with shareholders' assessment of independence of an individual, or where a non-independent Chairman is considered necessary for a short period or in the interim.
- (ii) the relaxation of this provision may also cause resentment amongst larger companies that special provisions apply to their smaller contemporaries.
- (iii) a further concern is that this may serve to be detrimental to the value of the provision that was recognised when it was first introduced.

Whilst we would consider each company on a case by case basis, where it was considered appropriate that the Chairman of the company sit on the audit committee, we would expect robust explanations and we may not always agree with a company's thinking on this matter, should they decide to deviate from what we consider to be a key provision within the Code in its current format.

Should you wish to contact me with respect to our views on these matters, my direct line is 0207 786 7219 and email is frank.curtiss@rpmico.uk

Yours sincerely



Frank Curtiss
Head of Corporate Governance