

Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
Fifth Floor  
Aldwych House  
71-91 Aldwych  
London WC2B 4HN

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Dear Chris

## **Response to December 2009 consultation on the revised UK Corporate Governance Code**

This is Aviva Investors' response to the December 2009 consultation. Aviva Investors is a global asset management company wholly owned by Aviva plc, the world's fifth largest insurance group with assets under management in excess of £250 billion across a range of funds.

This response follows on from our previous two responses on the effectiveness of the Combined Code. We are generally supportive of the proposals put forward in the consultation document and also supportive of the Association of British Insurer's response. In this paper we are focusing on a number of specific areas of interest where we wish to make additional comment.

These are as follows:

### **SECTION A - LEADERSHIP**

**A.3: Role of the Chairman:** We agree that the role of the Chairman is key and are therefore supportive of the new principle. However, we believe that the role of the chairman could be bolstered by more definition of the role, especially in relation to succession planning and establishing the culture and ethical standards led from "the tone at the top".

Our previous two responses stressed the importance of both these issues but the proposed draft does not address either of them adequately.

**Succession planning:** We see poor succession planning as a key risk to stability and company performance and an obvious area of weakness. In addition to "key man" risks, we have seen CEOs become overly powerful on boards without proper succession planning, leading to (amongst other things) a lack of independence on boards and unacceptable pay arrangements. In our experience, many companies have been found not to have adequate arrangements when it really counts and the Code does not provide any additional focus or incentive for companies to up their game in this vital area. We would see this as a clear gap in the Code if it is not addressed by increased emphasis.

**Board evaluations** should evaluate succession planning for boards and senior management and the adequacy of the arrangements. We agree that there should be external assessments at least every 3 years.

**On culture and ethics**, our persistence on having specific guidance in this area is down to our belief that much of the current crisis can be blamed on an erosion of organisational culture and ethics. Decisions are made on basic assumptions that guide an organisation. Employees need clear leadership on what is/is not acceptable. As shareholders therefore, we wish to see that companies are operating with integrity and there is adequate disclosure to reassure us that good standards exist and are being implemented.

### **SECTION B: EFFECTIVENESS**

#### **B.1. Composition of the board:**

**Diversity:** We would have liked to have seen some reference to diversity on boards. Whilst we believe the overriding focus should be on the best qualified people and those with the best experience,

many boards are still “pale, male and grey” and unrepresentative of the markets and societies they are operating within. We believe companies would benefit from a wider perspective of their markets. This would entail looking at women and different nationalities and disciplines.

**Definition of independence:**, Aviva Investors would only consider an appointed director as independent if he/she was appointed via an independent nomination process. The new UK Corporate Governance Code should add this as a factor to consider when assessing independence.

**Pool of directors:** In view of the increased time commitments expected of non executive directors today (e.g. new principle B.3.) many have commented on the small pool of available directors. In order to increase the pool over time, an idea would be for FTSE 100 and FTSE 250 companies to each identify and develop a small number of their most promising individuals (who are not yet on their boards) as future board members by giving them the appropriate training and making them available for appointment on other company boards. If each company puts forward 2 potential candidates into the pool each year, over time, we should start to resolve the problem.

**B.7 Re-election:** Our preference would be for all directors to be subject to annual election by shareholders. We are of the view that this would most closely preserve the philosophy of a unitary board whereas the annual re-election of the Chairman alone has the potential of being divisive. We know of no instances whereby the right of annual re-election of all directors has been abused by shareholders. Shareholders in the UK already have the ability to put forward resolutions or call Extraordinary General Meetings to remove directors and this is very rarely used. We do not believe, as some do, that annual re-election will lead to short term thinking – the companies that already have annual re-elections do not appear to be any more short term than others. We should also bear in mind that the Code operates in a “comply or explain” environment so companies are free not to hold annual elections for all directors if they so choose, so long as they explain.

## **SECTION C: ACCOUNTABILITY**

C.1. The board should present a balanced and understandable assessment of the company’s position and prospects: Bearing in mind that bad governance is a risk to prospects and good governance is an opportunity, companies should also summarise the adequacy of their board and governance arrangements so shareholders get a holistic and rounded view of how well the company is being managed. This would also be an effective way of encouraging the integration of governance into mainstream investing where many fund managers and sell side analysts still ignore the dangers and benefits of governance.

Aviva Investors would strongly encourage companies to consider adopting a vote on CSR disclosure. In this way, shareholders can understand the company’s values and standards and long term approach via the report. Putting this information to the vote at the AGM then puts the onus on shareholders to provide feedback to the company on this information and the broader performance in this area, and is consistent with the principles within the Stewardship Code.

## **SECTION D: REMUNERATION (AND SCHEDULE A)**

We welcome explicit reference to “long term” success of company.

## **SECTION E: COMMUNICATION**

E.2.2 There has been some concern expressed that this section may be taken to mean that all companies should have a show of hands. Whilst we have no objection to a show of hands, we would rather the emphasis be put on companies always voting on a poll. We believe all companies should carry out their voting by poll.

We agree this section should be removed subject to sufficient progress being made on the Stewardship Code.

**Other consultation questions:**

Where companies use their website to meet disclosure requirements of the Code, there needs to be consultation on what should be consigned to websites and what should stay in the Report & Accounts. Governance should not look like its been downgraded by removing important stewardship information from the Report & Accounts.

We note that the FRC is considering options for producing practical guidance on good practice engagement between companies and investors. We believe such guidance would be beneficial as it would be helpful to have a clear view on what good engagement looks like.

In summary we are generally supportive of the code's changes.

Yours truly,

Anita Skipper  
Corporate Governance Director  
Aviva Investors