

CAPITA

COMPANY SECRETARIAL SERVICES

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
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via post and email: codereview@frc.org.uk

Capita Company Secretarial Services Response to FRC Consultation on the Revised UK Corporate Governance Code (the "Code")

5 March 2010

Dear Chris:

We appreciate the opportunity to comment on the final report and consultation on the revised UK Corporate Governance Code ("the Code"). We are particularly pleased to see the FRC's recognition that good corporate governance relies on people and behaviour rather than process has been carried over into the final report and consultation. We are also encouraged by the greater emphasis on long-term success and the board's role in achieving this.

In our response we focus on the following topics:

- Name change;
- Board evaluation;
- Risk management;
- Responsibilities of the chairman and directors;
- Frequency of director re-election;
- Corporate governance statement;
- Review of Turnbull and Higgs; and
- Institutional investors.

Please note that, as with all of our consultation responses, these are the views of Capita Co-Sec and are neither representative of Capita Group Plc nor our clients; we do not as a rule consult with these for such a response.

Name change

We support the name change from "The Combined Code" to the UK Corporate Governance Code". We agree that this title will make the Code's status as the UK's recognised corporate governance standard for companies clearer to foreign investors and foreign companies listed in the UK.

Board evaluation

As we discussed in our May and October 2009 consultation responses, the need for increased Board evaluation is greater than ever. The FRC has proposed the addition of a provision to the Code recommending externally facilitated Board evaluation at least every three years. We are encouraged by this more timetabled and structured approach, however we continue to support our previous suggestion that external board evaluation should be undertaken biannually, as this would ensure a more focused challenge to directors. We acknowledge that biannual external evaluation may be too costly for some companies, however the Code provides these with the flexibility to explain why they consider this to be unnecessary or undesirable.

Risk management

As we said previously in our letter of 9 October 2009, risk management should be embedded into every aspect of an organisation and should not be seen as just another box to tick. This needs to be brought about by changes in behaviour, rather than changes to the Code. Therefore we agree with the FRC's decision not to extend all of the recommendations on risk in the Walker Report to non-financial listed companies, and with commentators' view that a major overhaul of the guidance is not required.

However, we believe that good risk management involves the identification of past, present and future risks as well as low probability risks that could potentially have a high impact on a company. Therefore, we would recommend that wording be added to Section C.2.1 of the Code as follows in italics: "the board should satisfy itself that the appropriate systems are in place to identify, evaluate and manage the significant *past, present and future* risks faced by the company, *including low-probability, high impact risks*".

Responsibilities of the chairman and directors

We agree that new principals should be added to the Code on the roles of the chairman and the non-executive directors ("NEDs") and on the need for all directors to have sufficient time to perform their responsibilities effectively. The role of the chairman as leader of the board is imperative and should be prominent in the Code. However it is our belief that the role of the Company Secretary is also crucial; providing governance structure, advice and administration whilst acting as the 'conscience' of the Board and of the organisation. Therefore we feel that the role of the Company Secretary should also be given greater prominence in the Code.

Frequency of director re-election

Although there are pros and cons to both versions of Code Provision B.7.1 on re-election, we believe that the second option - annual re-election of the chairman and any directors who have served longer than nine years – would serve better in the interests of governance of the board and the company.

In our previous consultation responses we recommended the removal of the 'nine year rule' as we feel that it sacrifices experienced, valuable NEDs for the sake of an 'appearance' of independence. However we feel that retention of the nine-year rule is preferable to annual re-election of directors, as we are concerned that this might encourage shareholders and the board to think in the short-term, and would ultimately detract from good governance.

The chairman has the ultimate responsibility of ensuring that any shareholders' concerns are addressed, including concerns relating to remuneration. During the recession many shareholders lost faith in the boards of the companies in which they invest. Annual re-election of the chairman would provide greater accountability to shareholders, helping to rebuild trust.

Corporate governance statement

We welcome the recognition that there is a need for boards to embrace confident and persuasive communication with shareholders rather than resorting to boilerplate, and we agree that chairmen should see the corporate governance statement as an opportunity to demonstrate to current and potential investors why they can have confidence in the board. However we feel that the wording in paragraph 7 of the Chairman's Statement, "*It is hoped that chairmen will choose to report personally in their annual statements how the principles (in Sections A and B of the new Code) relating to the role and effectiveness of the board have been applied*", should be strengthened. We would suggest that the wording be changed to read "*Chairmen should report personally...*" as we feel that making this a requirement would encourage a more effective dialogue between the board and shareholders.

We do not think that companies should be given a choice between putting the corporate governance statement on the company website or in the annual report. Instead, we would recommend that the Code is amended so that companies are required to place their full corporate governance statement on the website, with a summarised version in the Annual Report focusing on the essential information relating to the last twelve months and looking forward to the next twelve months. This would help to reduce boilerplate statements, streamline the Annual Report and pinpoint the key issues for shareholders.

Review of Turnbull and Higgs

We are pleased that the FRC has commissioned the ICSA to work with others on its behalf to update the 2003 Higgs Report best practice guidance. In particular, we feel that the guidance on the composition of boards needs to do more to encourage diversity on boards and the avoidance of "group think", and we hope to see this in the updated guidance.

We also support the FRC's plan to carry out a review of the Turnbull Guidance on internal control. While we feel that in general this continues to be relevant, an updated version that takes into account current market issues and is cross-referenced with the updated Combined Code would be of value.

We look forward to participating in both of the above reviews.

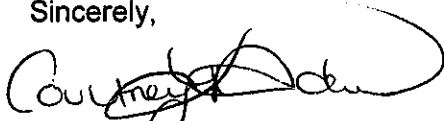
Institutional investors

We are supportive of the FRC's proposal to remove Section E of the Code addressed to institutional investors and its recommendation that these instead be subject to a separate Stewardship Code. Constructive engagement between a company and its shareholders is key, and we feel that the introduction of a "comply or explain" requirement for relevant investment management firms would help to promote this.

Conclusion

We would like to thank the FRC for the opportunity to express our views on the final report and consultation on the Revised UK Corporate Governance Code. We would be happy to discuss any of the above in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'Courtney Adams', with a large, sweeping flourish extending to the right.

Courtney Adams
In-House Legal Adviser
Capita Company Secretarial Services