

COMMENTS ON PROPOSED CHANGES TO THE COMBINED CODE ON CORPORATE GOVERNANCE

Disclosure Requirements.

The FRC has invited views on whether the requirements in the Code that certain information must be disclosed in the annual report should be amended to enable companies to take advantage of the flexibility allowed under Section 7.2 of the FSA's Disclosure and Transparency Rules, which allows companies a choice of whether to put the corporate governance statement on the website or in the annual report (paragraph 15). It is suggested that "this might provide an opportunity for companies to make the annual report more focused by placing the full corporate governance statement on the website and an edited version containing the most important information in the annual report".

The evidence would suggest that there now appears to be broad market acceptance that corporate governance can be a factor in contributing to corporate success. This is primarily attributable to the success of the Combined Code and its predecessor codes in highlighting corporate governance principles and provisions. In turn, corporate behaviour becomes known to the market through the reporting process including, most importantly, the publication of the corporate governance statement in the annual report, whether in print or electronically.

The annual report is, arguably, the single most important publication produced by companies on a regular basis. It is, at present, an integrated document incorporating a variety of sections including the chairman's statement, the chief executive's review, the business review, the directors' report, the corporate governance statement and the financial statements. The reader is able to form a view as to the performance, strategy and governance of the company without having to search elsewhere for elements of the complete picture.

Notwithstanding the flexibility allowed under Section 7.2 of the Disclosure and Transparency Rules, I suggest that the Revised Code permitting companies to publish anything other than the full corporate governance statement in the annual report would be a retrograde step for the credibility and development of corporate governance. By all means, companies should be encouraged to publish their corporate governance statement on their website but the **full** statement should also be published in their annual report so that shareholders and other interested parties do not have to undertake a separate website search in order to obtain the complete governance picture.

If companies were given the flexibility of publishing an edited version of the corporate governance statement in the annual report who would decide on what

is "the most important information" to be published in the annual report?. The implication is that some information in the corporate governance statement is less important than other information. If this is the case then should that lesser information not be identified and deleted entirely from the Code?. However this all seems at odds with the following finding, "In the progress report issued in July the FRC invited respondents to identify any such requirements that could be removed on the grounds that the information was of little value. None was identified; all the information provided in accordance with the Code was considered useful by at least some respondents" (paragraph 14, Consultation on the Revised UK Corporate Governance Code). Another issue is that websites of many plc's are quite badly designed and it can be difficult to locate governance information.

A downgrading of the full corporate governance statement from its primary position at the core of the annual report would be giving the wrong signal to the market at a time when corporate governance was never more important and when we need the highest standard of behavioural governance from companies.

RE-ELECTION

The FRC has sought feedback on whether all directors should be subject to annual election by shareholders or whether only the Chairman should be subject to annual election by shareholders (B.7.1.).

One of the advantages of the existing requirement, whereby directors are subject to re-election every three years, is that notwithstanding the fact that they may not succeed in being re-elected the remaining directors will still hold office. In theory, I am in favour of the annual election of all directors by the shareholders as this more fairly reflects the collective responsibility of the unitary board. However, in extremis, companies could face a potentially very serious situation if, for example, each of the existing directors was unsuccessful in obtaining re-election. In those circumstances, the whole board would lose office at the conclusion of the AGM with potentially devastating consequences for the direction and continuity of the company.

In the circumstances, I suggest that annual election of the Chairman is the most pragmatic solution.

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