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Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
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5 March 2010

Dear Mr. Hodge,

Financial Reporting Council - Consultation on the Revised UK Corporate Governance Code

Jupiter Asset Management Limited manages assets for a range of institutional and private clients. It is a subsidiary of Jupiter Investment Management Group Limited and manages both segregated and pooled pension funds, charities, investment companies and acts as Investment Advisor for the Jupiter range of unit trusts.

We welcome the FRC consulting on the revised UK Corporate Governance Code following publication of its 2009 Review of the Combined Code and the recommendations made in Sir David Walker's Review on the governance of banks and other financial institutions.

We believe strongly that the banking crisis and the deterioration in the economic environment have shown that corporate behaviour and board effectiveness require both improvement and strengthening to improve shareholder value and restore investor confidence. Therefore we are supportive of changes to regulatory and best practice guidelines to this end.

In the pages that follow we provide specific responses to the proposed changes to the Code, enumerated in the manner provided in the consultation document.

Our overall responses are supportive of what is proposed. However, we have highlighted certain areas where we believe additional emphasis would further enhance the revised Code. The level of detail provided in communications between companies and investors, for example, is of particular interest to us in our work on behalf of investors. We have therefore underlined the need for greater transparency and specificity from companies in this area. We also provide some suggestions for additions to sections B, C and D in the Main Principles which encourage greater focus on sustainability governance. We firmly believe that environmental and social risks have the potential to erode shareholder value over the longer term and that company leaders should pay due regard to these risks in planning.

Section A: Proposed Changes to the Code

Proposed changes to the structure of the Code

We agree that the change in name to “The UK Corporate Governance Code” would make it clearer to both foreign investors and companies as to which Code is applicable for UK companies.

We support the separate board sections titled “Leadership” and “Effectiveness”. In addition, the new and revised principles will clarify further the factors we consider essential to establish an effective and responsible board which will steer overall corporate behaviour.

We agree with the proposed removal of former Section E (addressed to institutional shareholders) provided implementation of the Stewardship Code proceeds. If implementation of the Stewardship Code does not proceed, then Section E should be reinstated.

Proposed changes to the content of the Code

Our comments on proposed changes to the Main Principles are set out on following pages.

Disclosure requirements

While we think it is useful for the corporate governance statement to be put on a company’s website, we consider that it is appropriate for the full statement to be included in the annual report. Partial or full statements being located in different sources will be confusing. As an institutional shareholder, we prefer that all relevant information is contained within a single source, e.g. the annual report, as this facilitates easier assessment and monitoring of corporate governance and exercise of our stewardship responsibilities.

Other actions resulting from the review

We welcome the additional proposed FRC consultations covering practical guidance on good engagement between companies and investors, on internal control (a limited review of the Turnbull Guidance) and updating the good practice guidance on roles of chairman and non-executive directors (2003 Higgs Report).

Section B: The Draft Revised Code

Chairman’s Preface

We advocate strongly that chairmen should report in their annual statements as to how the principles relating to the role and effectiveness of the board have been applied. If these statements are open, transparent and clearly demonstrate how the board has worked under the leadership of the chairman, we agree that investors will place more credence on explanations as to any non-compliance with the Code’s provisions.

Jupiter believes that the Code’s “comply or explain” approach remains appropriate and continues to work well. It allows flexibility to both the company in explaining any non-compliance and to shareholders in evaluating these explanations.

We also agree with the sentiments in the Chairman’s preface regarding “boiler-plate” statements. In our experience such statements do not provide satisfactory insight into the effectiveness of the board and make it difficult for us as shareholders to evaluate any disclosed non-compliance. Additionally they do not demonstrate that a company is acting in the spirit of the Code, but rather imply the contrary. We have encountered frequent instances where a company is acting in the spirit of the Code but is not reflecting this in the statements they make in their annual report. Due to the concentration of UK meetings held between April and July, institutional shareholders such as us typically do not have sufficient resources to engage on every non-compliance issue. Therefore we rely on companies to provide appropriate and relevant explanations for any non-compliance in annual reports and other investor communications.

Main Principles (Page 16 of the Consultation Document)

Section A: Leadership

This principle emphasises the collective responsibility and accountability of all members of the board. The insertion of “long-term” regarding the “success of the company” is welcomed as it further underlines the importance of acting in the long-term interests of all stakeholders and not adherence to short-termism.

A.3. “The chairman” as a new principle clearly sets out the importance of his/her leadership of the board. The new text in respect to the chairman ensuring that adequate time is available for discussion on strategic roles clarifies the substantive nature of a chairman’s duties.

A.4. The new principle on the role of non-executive directors re-emphasises their role to constructively challenge and reinforces the collective responsibility of the whole board to develop proposals on strategy.

Section B: Effectiveness

B.1. We welcome the new principle whereby the board and its committees should consist of directors with the appropriate balance of skills, experience, independence and knowledge of the company. In addition, an increased emphasis on relevant industry experience should not dilute the importance of diversity and of insight into key environmental and social risks and opportunities. We firmly believe that without the combination of all these factors, a board cannot effectively discharge their duties.

The fine tuning to the supporting principles as to the size of the board and its committees adds clarity. In addition, facilitating progressive refreshment of the board through widening the pool from which candidates could be drawn is essential if boards are to consist of directors with the requisite range of skills and independence and fresh perspectives.

B.2. Under appointments to the board, we believe that more emphasis should be placed on orderly succession planning. We would welcome chairmen reporting annually on what process they have adopted and any progress made.

B.3. We believe that all directors should allocate sufficient time to the company to perform their responsibilities effectively. In respect to non-executive directors, we expect their time commitment and the ability to undertake their duties will form part of their annual evaluation.

B.4. One of the main principles that companies need to address is to ensure that directors have the appropriate balance of skills set, training and development as set out in B.1 above. This, together with directors having access to the company's operations and staff, are important in understanding the company's business and corporate behaviour. We agree that, under the guidance of the chairman, new directors should receive a full, formal and tailored induction and existing directors should continually update their skills. These should be reviewed during their annual evaluation process.

B.5. In providing leadership to the board, we expect the chairman to ensure that the board receives timely, accurate and clear information as this is fundamental in enabling them to carry out their fiduciary responsibilities.

B.6. We consider evaluation of the board, committees and individuals is central to monitoring their effectiveness and should identify where refreshment is required, the need for training and other issues. We are supportive of an externally facilitated performance evaluation every three years as this will provide an independent oversight of how the board is operating. However, reporting in annual reports on this important monitoring function has, for the most part, been "boiler-plate" in nature.

Under the current ISC Code and the proposed Stewardship Code, institutional shareholders are required to monitor the effectiveness of the board and its committees. A key part of our monitoring process is through reviewing the board evaluation statement in the annual report. Therefore companies are encouraged to make improved and more pertinent disclosure.

B.7. The re-election of directors is central to holding directors accountable and therefore is fundamental to shareholders rights.

Jupiter is supportive of the annual election of directors, i.e. the first option under provision B.7.1.

For the purposes of holdings boards more accountable, a move towards annual elections seems appropriate. This would allow specific issues concerning audit or remuneration to be addressed and would be more equitable than singling out individual directors. This would also reduce the number of shareholder requisitioned resolutions seeking the removal of directors. We also believe that this model would encourage a more constructive dialogue between shareholders and directors when concerns arise.

We would caveat this, however. Annual elections may perpetuate a culture of short-termism and the annual re-election of all directors could be reviewed as a potential risk of destabilising boards. Therefore it will be important for shareholders to demonstrate that they will not routinely vote against the re-election of directors but rather show they are following a considered decision-making process. Furthermore, we as institutional shareholders recognise the value of directors having tenure, continuity of experience and, most importantly, interests aligned with other stakeholders.

Section C: Accountability

C.1. We understand that Provision C.1.2 “requiring an explanation as to the basis on which the company generates revenues and makes a profit from its operations and its overall financial strategy” should normally be included within the Business Review as required by the Companies Act 2006. Therefore, we don’t think there is a requirement for this provision.

However, we do think it is now appropriate that companies should produce a forward looking sustainability strategy, i.e. a strategic description of how they will respond to major social and environmental trends like climate change and associated public policy responses, so that they maintain or increase shareholder value.

C.2. Strengthening risk management and internal control is necessary and appropriate. Provision C.2.1 (taken from the Turnbull Review) that the board should satisfy that the appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company highlights the importance of this responsibility. These risks should also include sustainability risks such as carbon regulation, water security and climate change. Risk management and reporting on this by companies has been inadequate and requires improvement.

C.3. Internal controls and external audit functions must provide and protect the integrity of the company’s financial position as well as its financial information. Accordingly, transparency in applying policies and internal procedures is a necessary function of accountability. The independence of auditors and monitoring of their non-audit work is important in maintaining their independence.

Section D: Remuneration

Remuneration, both at board and below board level, has come under intense scrutiny and criticism, and will continue to do so, from shareholders, regulators and the public. This is an area where trust needs to be restored and to ensure excessive remuneration is confined to the past. There should be no reward for failure and mitigating provisions, such as claw back, must be put in place to utilise if required.

D.1. We hope the new supporting principle under D.1 reinforces the objective that performance-related elements of executive directors’ remuneration should be designed to align their interests with those of shareholders and to promote the “long-term success” of the company. Moreover, we encourage companies to include the role of sustainability in executive performance evaluation. These directly feed into improving corporate behaviour and eliminating inappropriate risk culture.

D.2. While the principles and provisions under D.2 Procedure are virtually unchanged, we believe that greater transparency from companies is required. For instance, on the appointment of consultants and whether the consultant firms are undertaking any other business for the company. Companies should be encouraged to provide more detailed disclosure in the annual report on the remuneration committee’s role in determining and monitoring remuneration for senior management (below board level).

In addition to shareholders’ approval being required for all new long term incentive schemes, we believe that companies should be encouraged to consult with shareholders prior to making awards in schemes that have been not been used for a period of time. Whilst these existing schemes will have already been approved by shareholders, the terms may no longer be appropriate, e.g. maximum annual award levels.

Section E: Communication

E.1. We are fully supportive of the amendment to the supporting principle that the chairman should ensure that all directors understand their major shareholders' issues and concerns. As boards are accountable to shareholders and other stakeholders, it is fitting for all directors to be cognisant of all relevant issues.

E.2. Due to the concentration of UK company meetings over a relatively short period, with some FTSE 100 companies holding meetings on the same day, institutional investors have to be selective as to which (if any) meetings they attend.

E.2.2. There needs to be greater compliance by companies in disclosing the results of voting at meetings on their websites and in a timely manner. It is not sufficient for companies to disclose that all resolutions were passed as this doesn't allow monitoring of how votes were cast. While we accept that a "vote withheld" is not a vote in law, we believe an "abstention" is an appropriate signal to the board of a concern as it denotes that a vote for or against was not warranted. Furthermore, we think that "abstentions" should be deemed as being non-supportive of management and the board registers this dissent.

We thank you for providing Jupiter with the opportunity to participate in this consultation.

Yours sincerely,



Edward Bonham Carter
Chief Executive Officer



John Chatfeild-Roberts
Chief Investment Officer