



22 June 2007

Mr Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
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**By post and email to: [codereview@frc.org.uk](mailto:codereview@frc.org.uk)**

Dear Mr Hodge

## Review of the impact of the Combined Code (the “Code”)

I write on behalf of 3i Group plc (“3i”) in response to the FRC’s Review of the impact of the Combined Code dated April 2007, seeking the views of listed companies.

3i is a FTSE 100 company, and a world leader in venture capital and private equity.

In summary, it is our view that the Code is being implemented successfully and that, in the absence of any demonstrated need, further extensive changes to the Code should be avoided. However, we do agree that the opportunity should be taken to remove duplication and resolve inconsistencies, as your review suggests.

## Specific questions raised

Our comments on the specific questions raised by the review are as follows:

### 1. Does the Code support better board performance over time?

The Code provides a clear framework to assist the promotion of board effectiveness and suggests useful processes and systems that the board and its committees might adopt. These and other provisions are encouraging greater transparency for investors. In particular, we believe:

- (a) the descriptions of the roles of the Chairman and Chief Executive have promoted clarity in the division of responsibilities at the top of companies;
- (b) the provisions on appointments have raised the quality of board appointment procedures; and

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(c) the provisions on board performance evaluation are helping boards become more effective.

2. Is the “comply or explain” approach working effectively?

We believe that in practice the “comply or explain” approach is working reasonably effectively. Nevertheless, there is an unwelcome element of “box-ticking” by some commentators, which, as you acknowledge, can inhibit companies from taking actions, which they believe, would be in their company’s best interest.

Accordingly, although we do not have any specific changes to the comply or explain approach to suggest (other than the suggested change to terminology mentioned below), we believe it would be helpful for the FRC to continue to emphasise that explanation may be as valid as compliance, and that responsibility falls on investors to consider such explanations in the context of the circumstances of a particular company.

3. What impact has the Code had on smaller companies?

The cost of, and management time involved in, smaller companies complying with the Code should not be underestimated and, we believe, may place a disproportionate burden on them since they may not have the infrastructure in place to support compliance with every provision of the Code. For example, the presumption that a non-executive chairman ceases to be independent on appointment affects the chairman’s ability to sit on Audit Committee and increases the number of non-executive Directors required.

We would encourage the FRC to consider reducing the burden on smaller companies to the greatest extent possible. There might also be scope for the FRC to give greater encouragement to investors to engage more actively in dialogue with smaller companies. This would make the “explain” option more readily available to those companies. The FRC might see it as appropriate to give additional guidance to smaller companies as an alternative to making formal changes to the provisions of the Code.

In addition, whilst we recognise that the FRC is not responsible for the Listing Rules, we believe there may be further opportunities to reduce the overall burden of governance compliance by reducing the other regulatory obligations placed on smaller listed companies.

4. Do disclosures on the Code in annual reports provide useful information to shareholders at proportionate cost to companies?

We do not believe that the information required to be disclosed in the annual report incurs disproportionate costs for a company of our size. Smaller companies, however may find such requirements more burdensome.



## Additional 3i comments

We note that the revised version of the Code published in June 2006 permits the company chairman to sit on the Remuneration Committee, which we support. However, as noted in our previous letter dated 11 April 2006 (in response to the earlier consultation), we believe the principles that apply to the Remuneration Committee should apply equally to the Audit Committee. We believe that the company chairman should be permitted to sit on the Audit Committee.

If thought necessary, this could be combined with provisions to the effect that:

- (a) the chairman may sit only in addition to the minimum required number of independent members (three for a FTSE 350 company);
- (b) the chairman must have been independent at the time of appointment (compared to a situation where, for example, the chairman was previously Chief Executive); and
- (c) the chairman cannot chair the Committee.

In addition to the above comments, we would also like to reiterate briefly some of the points made in our previous letters, including our letter of 11 April 2006:

- The use of the phrase “apply or explain” might be more appropriate than “comply or explain”, because of the excessive reliance on “box ticking” by investors, institutional adviser bodies and corporate governance ratings agencies, which can make the “explain” option less attractive than it should be.
- Clarification in the Code that the decision on director independence is one for the board, and that the nine year rule for non-executive directors is not a rigid limit would be useful.
- A relaxation to the Code provision stating that no individual should be appointed to a second chairmanship of a FTSE 100 company would be useful to allow, for example, a period of overlap, or for a second chairmanship to be taken up where the individual has no other directorships.

I hope you will find these comments useful. If you have any questions or would like to discuss these matters further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink that reads 'A W W Brierley'.

A W W Brierley  
Company Secretary