

19 July 2007

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

BARCLAYS GLOBAL INVESTORS

Dear Mr Hodge,

Enclosed is the response of Barclays Global Investors in London to the FRC assessment of the impact of the Combined Code.

Barclays Global Investors is one of the largest institutional shareholders in the world, with over £950 billion under management globally in indexed and active quantitative portfolios. We recognize that the exercise of voting rights is an important part of shareholder value and we have exercised votes on behalf of our clients for over 10 years. We vote in a considered manner, looking at the relevant issues in each situation. Our overriding principle is to vote in the best interest of shareholders, that is, our clients.

Overall, we would agree with your assessment that the Code is working reasonably well and, accordingly, we do not believe that major revisions are needed at this time. We provide detailed responses to the specific questions you posed below.

Q1. Does the Code support better board performance over time?

Through voting, engagements with investee companies and other activities, we have come to the view that the Combined Code has enhanced board professionalism and functioning. Specifically, a few chairmen of our investee companies have noted that the performance evaluation provision of the Code has spurred boards to review their performance and effectiveness regularly and in a thoughtful manner. In addition, the emphasis on having “financial experts” on the audit committee appears to have improved the committee’s functioning, which is highly welcomed given its expanding set of responsibilities and the changes in accounting standards and audit practices in recent years.

Initially, we were concerned about the presumption that the independence of a non-executive director is “lost” after 9 years on the board. We felt this threshold was too arbitrary and could lead to the departure of an inordinate number of qualified and productive non-executive directors simply because they had crossed the 9-year mark. In practice, companies seem to have applied this provision sensibly, with some boards opting to refresh themselves in such situations while other boards choosing to maintain the status quo. We also find it encouraging that, similar to the impact of performance evaluation, this provision has prompted some boards to consciously and regularly review their composition and the contributions of individual members.

Q2. Is the “comply or explain” approach working effectively?

In general, we believe that the “comply or explain” approach is working effectively, although the quality of explanation in certain areas could be improved. For instance, while many companies provide adequate details regarding the process employed in board evaluation, they reveal very little regarding evaluation findings and, crucially important, the remedial measures taken. In addition, boards that choose to reappoint non-executive directors who have served on the board for 9 years or more tend to use similar bland language to justify the continued independence of these individuals.

We appreciate that companies are not able to anticipate all of the questions shareholders will pose regarding their governance practices. Where explanations provided in the corporate governance report do not answer all of our questions, we have found supplementary discussions with the company (e.g., company secretary and others as appropriate) helpful in clarifying matters and assuaging concerns that we may have. It is also noteworthy that, compared to other markets, companies in the UK are generally receptive to engaging constructively and candidly with their shareholders.

In our view, the “comply or explain” approach has been less successful with respect to companies with a controlling shareholder. Some companies in this category, shielded from the prospect of being taken over or defeated at a shareholders meeting, do not exert sufficient effort to comply with either the letter or spirit of the Code.

We do not believe that “box ticking” is prevalent among large institutional investors in the UK. Rather, most institutions seek to understand the individual context of a company prior to arriving at a voting decision.

Q3. What impact has the Code had on smaller companies?

We have found that many smaller companies, despite making genuine efforts to do so, are encountering difficulties complying with the Combined Code, particularly regarding board structure. In this respect, the “comply or explain” approach of the Code has been highly beneficial for smaller enterprises because it allows these firms to substantiate why they have deviated from the Code. In any event, there appears to be some uncertainty among smaller enterprises regarding the appropriate level of compliance with the Code and, where they have not complied with certain Code provisions, the level of detail they should provide in their explanation.

In our view, a further benefit of the Code for smaller companies is that it serves as a roadmap for these firms, particularly those with high growth potential and aspirations of some day joining the ranks of the largest companies.

Q4. Do disclosures on the Combined Code in annual reports provide useful information to shareholders at proportionate cost to companies?

Whilst we believe that disclosures on the Combined Code in annual reports are highly relevant and useful, given our position as investors, we are not well-positioned – relative to our investee companies – to express a view on whether such disclosures are provided at proportionate cost.

Any questions regarding this response should be directed to Simon Wong at Barclays Global Investors in London (contact details listed above).

Yours sincerely

Simon Wong
Head of Corporate Governance