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Mr Chris Hodge
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Sent by email to: codereview@frc.org.uk

Dear Chris

FRC Review of the Impact of the Combined Code

The Institute of Chartered Secretaries and Administrators (ICSA) is an international professional body representing the company secretary. Many of our members are company secretaries in listed PLCs and work closely with boards of directors on Combined Code (the "Code") compliance. We would like to make the following comments in response to your review:

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

Yes we certainly consider that the principles and provisions of Section A provide the right framework to underpin good board performance.

2. Is the "comply or explain" approach working effectively?

We fully support the principles based approach behind the 'comply or explain' regime. However we would raise two points that could improve how well the regime works in practice:

'Explaining' is too readily interpreted as 'not complying' and is therefore often interpreted in a negative context before the explanation is even read. As others have suggested, using the terminology '**apply** or explain' may be a preferable way to express the fact that companies do have a real choice and thereby encourage a more open-minded interpretation from investors and their advisers. We are not suggesting that explanations should not be rigorously reviewed, but simply that this review should be undertaken with

an open, unprejudiced mind. The current terminology of non-compliance (rather than non-application) immediately presents a negative connotation and therefore a degree of prejudice. This shift in terminology might also help companies take the 'explain' route more often; sometimes avoided even when it is in the better interests of the company, owing to a fear of a box-ticking negative response and the resultant impact on voting. This would be of particular benefit to small companies which are more likely to have good reason to apply the code discerningly or selectively.

We also support the suggestion of some of our members that the FRC itself engage with the voting service agencies actively to encourage them to provide companies with enough time properly to comment on their compliance reports, and to ensure that they understand that explanations should be given proper consideration and are not simply non-compliance. They should also be encouraged to consider the effect of their voting recommendations; for example to recommend abstaining from voting for the chairman owing to a disagreement on a minor governance issue might well not be in the best interests of shareholders should he not be re-elected.

Such meetings would also provide an opportunity to discuss their interpretation of code provision A.3.1. We understand that in assessing the nine years period on the board, years spent on a subsidiary board/boards are being brought in to the calculation by investor bodies, rather than restricting the test to service on the main board which we believe should be the case.

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

As you know the views of some of our members working in smaller cap companies were expressed at the meeting which you attended at the Institute on 2 July 2007, the output from which I have not repeated here under question 3.

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

We do not consider the Combined Code disclosure to be over onerous and in fact this mainly narrative part of the Report & Accounts is probably of increasing interest to investors as the importance of good corporate governance is increasingly recognised. It is noteworthy, however, that not all companies seek to make a virtue of the requirements so that much of the narrative can be anodyne to the point of seeming complacent.

Finally, as you are aware, changes from the 2006 Code, and significantly the Companies Act 2006 and FSA Listing, Transparency and Disclosure and Prospectus Rules are still being implemented by companies and further change, when not essential, would not be welcome at this time. We would

therefore not recommend a major overhaul of the Code until well after October 2008, by which time we will have seen how companies are operating in the new legal environment. More minor changes (such as any necessary clarification to A.3.1) could be desirable of course.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'B' followed by a horizontal line that loops back under the 'B' and ends with a small dot.

Bridget Salaman
Head of Policy, Corporate