

From: PETER WARRY [mailto:pwarry@btinternet.com]
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To: Sir Christopher Hogg
Subject: FRC Cosultation: Review of the impact of the combined code

PETER WARRY	phone 01242 518552 mobile 07887 523586 pwarry@btinternet.com
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Sir Christopher Hogg Chairman Financial reporting Council	Coxhorne London Road Cheltenham Glos GL52 6UY
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8 July 2007

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Dear Sir Christopher

I am responding to your invitation to express views on the FRC's consultation paper on corporate governance. The request was sent to me as Chairman of Kier Group PLC but I am also responding in my capacity as Chairman of Victrex PLC and BSS Group PLC. All three are FTSE250 companies.

1. Does the Code support better performance over time?

Well run companies existed before the Code and would have continued to do so if the Code had never been introduced, so perhaps the question really is: "has the performance of well run companies been negatively affected by the Code and has the performance of less well run companies improved as a result of the Code?" I would suggest that effect of the Code on well run companies has been marginally detrimental by diluting the importance of entrepreneurship and increasing the amount of bureaucracy but this has been offset by improvements in less well run companies.

There are, however, three areas where I believe the Code has had an adverse effect. First the requirement for a non-executive majority on FTSE250 boards where the chairman is counted as not independent. NEDs on FTSE250 boards tend to be more experienced and to have held larger jobs than their executive counterparts, as a result their contributions to Board debate tend to carry more weight. If there is an NED majority then the Board debate becomes unbalanced and there is a danger that insufficient emphasis will be given to the executives (who after all are actually running the company).

There may be merit in an NED majority on a FTSE100 company but this argument does not apply for most FTSE250 companies.

Second the concept that the Chairman is not independent and should therefore not be a member of the Audit Committee is misplaced. On FTSE250 companies the Chairman is typically expected to work one day per week which does not make him part of management. It does however make him the best informed of the NEDs and excluding him from the Audit Committee therefore potentially excludes the person with the best objective view.

Third, the requirement to benchmark remuneration against industry norms has (predictably) been inflationary: very few companies award senior executives below market salaries as shown by the survey that they are required to undertake, but many companies place executives above the average, either as a declared policy or on merit. As a result the average of new salary awards is always going to be above the average in the survey. Overtime the disconnect between Board salaries and those in the levels below the Board has grown and is now becoming worryingly large.

Although it does not detract from performance, a fourth point might also be mentioned: the Code requirement that the chairman, SID and NEDs should consult with institutional shareholders. This is impossible for FTSE250 companies to deliver because institutional shareholders have no interest in a dialogue with the non-executive members of companies except when the company's performance is unsatisfactory.

2. Is the comply or explain approach working effectively?

There is little doubt that box-ticking is the dominant expectation. None of my companies have an NED majority on the board and this is explained in their reports but this has not prevented the corporate governance bodies from criticising. Some companies get round the problem by having senior executives in attendance at the board meetings but not as official directors. However this is an artifice, if they act as directors in all but name then they should be directors. Similarly I suspect that most FTSE250 companies have the chairman in attendance at Audit Committee meetings for the reasons mentioned above. If companies see this as a necessity then rather than adopting the subterfuge of "in attendance" it would be much better than the Code was changed to permit, indeed encourage, the chairman's membership. Arguably "comply or explain" is leading to companies effectively providing misleading information.

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

Please see the answers to questions 1 and 2 above

4. Do disclosures provide useful information to shareholders?

Although governance departments and representative bodies do take an interest in the disclosures, I cannot recall any instance where an institutional fund manager or private shareholder has raised a question on the subject. This could simply mean that they are satisfied with the information provided but it might also imply that "real investors" do not find this information valuable.

Conclusion

I am conscious that my views may not reflect the mainstream of compliant opinion, so in judging their value I would ask you to look at the performance of the three companies that I chair, all of which have consistently outperformed their peers and the market in general over the circa eight years that I have served on each of their boards.

Might I also mention that my views have only been sought in my capacity at Kier Group PLC and not from the other two FTSE250 companies that I represent. As I believe the requirements of FTSE250 companies are distinct from those of FTSE100 companies, I think it would be helpful if you sampled FTSE250 companies as comprehensively as you do FTSE100 companies.

Yours sincerely

Peter Warry
Chairman Kier Group PLC
Chairman Victrex PLC
Chairman BSS Group PLC