

Sir Christopher Hogg,  
Chairman,  
Financial Reporting Council,  
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15<sup>th</sup> June, 2007



Many thanks for writing to me about the Combined Code. I have consulted with our Board, some of whom (Anthony Habgood and Charles Sinclair) have written to you separately with their own views.

My first and perhaps most important point is that there has been a parting of the ways between the original intention and the practice adopted by (often junior) people at investment institutions, and in particular at the umbrella institutions such as the ABI themselves, what is loosely referred to as the "Charter for Box-Ticking". Higgs himself at the time of the Higgs Report said the following:

"My message to Boards is that if some [proposed rules] don't fit, and you choose not to follow aspects of the code, explain why in plain language, not in lawyer speak. Stand up and be counted."

We do quite regularly, and continue to get recommendations to vote against and red tops. I will give you just two examples:

1. Anthony Habgood has been a Director for more than nine years. We explicitly say that in our view he is a very independent man (you know him and I'm sure you agree). All the umbrella organisations recommend to vote against his appointment on the grounds that he has been a director for more than nine years! So the original concept simply doesn't work.
2. The other example, which is even more ridiculous was on a recent remuneration change we made. We consulted with all of the major shareholders and they agreed with the changes. The ABI, on the recommendation of one shareholder, red-topped us. The irony is that the shares were held in an index fund of the ABI's member; and the manager refused to see us on the grounds that "we are an index fund and we don't see management".

This may seem parochial but it seems to me you need examples if we are going to change this ridiculous behaviour and bring back some common sense. The boards and senior management of such groups need a wake-up call.


My second point is related. It seems to me that directors ought to be able to make a choice on such issues as independence. Why nine years? Why not six? Biblical history would suggest forty – or if you are a Muslim seventy- two. There is no magic in any single number and the boards should be able to decide, provided that there are no commercial connections or connections with major investors on the part of the director concerned.

Finally, Gary Steinberg, one of our directors and the former Chief Investment Officer of Wellcome Trust and prior to that BP Pension Fund, in writing to me in response to a cover note sent to each of our directors with your letter and enclosures, replied with such clarity that I quote him in full:

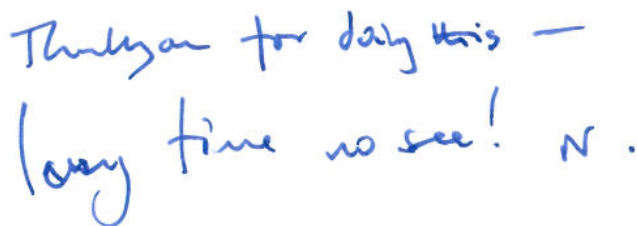
“In my experience UK institutional shareholders take the responsibility of ownership very seriously these days. In fact, reporting on specific aspects of ownership such as Socially Responsible Investing has become more or less mandatory for UK pension funds during the past few years.

The problem is that in a well diversified quoted UK equity portfolio, the cost of monitoring Governance and SRI compliance has now become very complex and onerous indeed, and not without conflicts. Increasingly therefore, this aspect of investment management is being outsourced to third party providers such as PIRC, ABI, Insight and Hermes. Inevitably, I sense that this activity has mutated into a process rather than marking the beginning of a dialogue between companies and shareholders, which I believe was the original intent of the architects of such initiatives. So, in summary, I think the question you pose is legitimate and one that should be pursued.”

I hope this is helpful.

A handwritten signature in blue ink that reads "James Nick". The signature is written in a cursive, flowing style.

Nicholas E.H. Ferguson

A handwritten note in blue ink that reads "Thank you for doing this - long time no see! N." The note is written in a cursive, flowing style.



## Financial Reporting Council

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Personal

18 June 2007

Dear Nick,

Thank you for such a good and cogent (though not, alas, unsurprising) letter. I am on the job and adding as much voice as I can but progress is bound to be slow.

You were brave to speak out about the tax concession on carried interest. I don't have a kneejerk reaction to the issue, but sure as hell it needed <sup>the</sup> transparency you've given it.

You and Ronnie Cohen and Jon Moulton have been my educators on the subject of private equity which, at best, seems to me to do the economy a very good turn. It will be a pity if inept public relations cause many people who should know better, to think otherwise.

All best, as ever.

Chris