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Sir Christopher Hogg
Chairman
Financial Services Authority
Aldwych House, 71-91 Aldwych
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Dear Sir Christopher

Review of the Combined Code

I am writing in relation to the review of the Combined Code being undertaken by the Financial Reporting Council (FRC). I note that in the Progress Report issued in July 2009, the FRC indicated that views already provided as part of the initial consultation need not be given again. I am therefore not repeating any of the points made in my letter to you dated 15 April 2009.

There are several additional observations about the Combined Code and the issues raised in the Progress Report that I would like to make. These appear under subheadings below.

First, however, I wish to express support for the three guiding principles that the FRC intends to adopt when assessing the lessons to be learnt from the financial crisis and the case for changes to the Code (set out on page 6 of the Progress Report). These guiding principles appear well considered and likely to lead to a more focused and effective Code. Guiding principles of this nature should also serve as a useful reference point for stakeholders when assessing the FRC's final report and proposed Code amendments.

Chairman – time commitment

The Progress Report refers to the Walker Review's recommendation that the chairman should be expected to commit a substantial proportion of his or her time, probably not less than two-thirds, to the business of the company. For a major listed bank (the focus of the Walker Review), a two-thirds time commitment is not objectionable. However, the Combined Code applies to a vast range of companies of differing sizes and types, and amongst those there would be companies where the role of the

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non-executive chairman would not require a time commitment in the order of two-thirds of the person's time. Therefore, to the extent that the FRC amends the Code to provide guidance on the time commitment of the chairman, it would seem desirable to steer away from a specific time frame.

Board balance and composition

Boards of typical large UK companies differ from those of typical US and Australian large companies in their higher proportion of executive directors. For large US and Australian companies, it is not uncommon for there to be only one executive director (the Chief Executive Officer) whereas it is not uncommon for large UK companies to have three, four or five executive directors.

There appear to be two main reasons for having several executive directors on a board:

- That senior executives have a greater sense of responsibility in terms of acting in the best interests of the company if they are also members of the board; and
- Executive directors enhance the skill set around the boardroom table and improve decision making of the board.

I would expect the second reason to be the weightier of the two, for most companies.

In BHP Billiton's and my own personal experience, a board can benefit from the advantages of broad-based executive input without necessarily having more than one executive director. The Board of BHP Billiton has extensive access to members of senior management. Members of the Group Management Committee (the most senior executives in the Group) attend all the regularly scheduled Board meetings, except closed sessions of the Board, where they make presentations and engage in discussions with directors, answer questions, and provide input and perspective on their areas of responsibility as well as matters beyond their portfolio. The Board also deliberates in the absence of management, for part of each meeting. Through this process the Board is able to engage in deep dialogue with management, testing the matters brought before it for decision. In turn, management take their responsibility for providing advice and analysis to the Board extremely seriously and as officers of the Company have similar duties to directors in terms of care, diligence, and good faith.

It is not clear to me that BHP Billiton's practice outlined above has less to commend it than the model set out in the current Combined Code (principle A.3: "there should be a strong presence on the board of both executive and non-executive directors"). In my view, the Combined Code should be less prescriptive in this area and allow for a wider range of practices, particularly recognising the different practices for global companies with substantial operations both in and out of the United Kingdom, and in our instance a requirement to comply with three corporate governance regimes (UK, Australia and the US) as a Dual Listed Company with an ADR program in the US. The Code should focus not on the means, but on the end: the input into the board of a variety of management views and perspectives.

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Frequency of director re-election

As the Progress Report makes clear, there are several options for moving towards more frequent re-election of directors. If the FRC decides that some move away from the status quo (re-election at least every three years) is warranted, there seem to be some strong arguments in favour of applying the same "rule" to every director. So, if annual re-election is the preferred frequency, there is a case for making *all* directors stand for re-election every year, rather than just the chairs of committees and/or the company chairman. This should ensure that the frequency of election rules do not act as disincentives to the attraction of good candidates to key roles such as audit and remuneration committee chairs.

BHP Billiton is supportive of annual re-election of all directors. We believe it is still very important that each director is subject to an appropriate performance review and the board forms and subsequently publishes its view in the Notice of Meeting as to whether each director's re-election is supported. Our earlier submission contains our views on individual director performance assessments which we believe should involve an independent process every 2-3 years supplemented in the alternative years by a board peer review.

Board evaluation

Board evaluation techniques have evolved over time, and there is every reason to expect them to continue to do so. I am therefore not supportive of any move towards a standardisation of the appraisal process.

In relation to reporting back to shareholders, the Walker Review's recommendation of a "meaningful, high-level" statement has much to commend it.

Risk management and internal control

The Walker Review's recommendation of a risk committee separate from the audit committee is, in my view, not one that should be extended by mandate to non-financial companies. While this may be the optimal structure for some non-financial companies, there is no body of evidence that that is the case across the board.

I trust these comments are useful.

Yours sincerely

D R Argus
Chairman