



7<sup>th</sup> October 2009

Mr Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
Fifth Floor  
Aldwych House  
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*Dear Mr Hodge,*

## **Review of the effectiveness of the 2008 Combined Code – Second Consultation- July 2009**

We have set out below BG Group's views on the main themes outlined in the Consultation paper, together with our responses to some of the specific questions raised regarding the content of the Code and its implementation.

Firstly, we believe that the Code remains "fit for purpose" and that fundamental changes in response to the recent financial crisis are not required. Accordingly, we support the guiding principles set out in the preamble to the Second Consultation, and in particular that where there is a demonstrable need for best practice to be clarified or strengthened, this should be addressed either through amendments to the Code or additional, non-binding guidance rather than through legislation or regulation. In addition, we strongly believe in the current principles-based approach to the Code and that it would be a mistake to increase the overall level of prescription in the Code.

Secondly, while we broadly support the recommendations in the Walker Review, we do not believe it is necessary or desirable for these to be considered best practice for all listed companies.

## **SECTION 1: CONTENT OF THE COMBINED CODE**

### **1. Board balance and composition**

The "nine year" rule is apparently derived from an assertion, unsupported by any evidence, that length of tenure erodes independence. Some directors may become out of date in terms of their ability to contribute to board debate. That, though, is a separate issue. If a director is the sort of person who "loses independence", then they probably lost it on the first day of their appointment.

In light of the way that "comply or explain" is generally interpreted (see comment on Section 2), too many experienced directors are being lost to companies.

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## **2. Frequency of director re-election**

We support the current system of re-election at regular intervals and would be concerned about a move to a system of annual re-election for all directors. The annual re-election of directors would potentially be open to abuse in the context of an on-going bid defence, perhaps, in any company with an aggressive large minority shareholder.

Walker proposes annual re-election of the chairman, but what happens if he is not re-elected? We have recently seen major companies struggle for two years or more to find a new chairman, let alone with a need to find one at 24 hours notice.

Annual election of chairs of main board committees (notably remuneration) could make these positions very difficult to fill. Is this desirable?

Notwithstanding my comment in (1) above, annual re-election of directors after nine years seems to be a reasonable safety net.

## **3. Board information, development and support**

We see no need for more guidance on these issues and we do not support the suggestion from some respondents that the Secretariat function should be divorced from the executive for the reasons cited in the Consultation; namely that this would reduce rather than increase effectiveness and would undermine the concept of a unitary board.

## **4. Board evaluation**

We do not support the proposition that the Code should be amended to recommend that board evaluations should be externally facilitated at least every two or three years. There are mixed views and experiences as to whether many of the consultants in this field are even able to add value. We believe that company chairmen are best placed to determine how best to undertake the evaluation, and that investors are best placed to scrutinise board performance. However, we do support the suggestion that the requirement that all main board committees should be evaluated every year should be relaxed and we would support moving to a rolling cycle of evaluation every two or three years.



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## 5. Risk management and internal control

All boards need to focus on understanding risk. Whilst risk and audit should be separated in much of the financial services sector, this may not be appropriate elsewhere. Each board should consider this in light of their own circumstances.

## 6. Remuneration

Again, we see no need to apply the specific Walker Review recommendations to non-financial companies. We believe there is already adequate disclosure required in the Remuneration Report and the key to good governance in this area should remain focused on an active dialogue with shareholders in respect of both the company's remuneration policy and the design and operation of short and long-term incentive schemes. However, we do believe that there could be greater emphasis in the Code on the need to ensure that remuneration policies and the design of incentive schemes are consistent with effective risk management.

## SECTION 2: THE IMPLEMENTATION OF THE COMBINED CODE

There may be benefit in modifying the current "comply or explain" approach to one of "apply or explain". The underlying problem, though, is that very many institutions and observers deem compliance as best practice and any deviation is seen as a regrettable departure. Investors and their voting advisory services should be encouraged to take a more pragmatic approach and, indeed, to be more willing to engage in dialogue when they have concerns.

In relation to reporting on the implementation of the Code, we do not see a need for the FRC or the FSA to undertake greater monitoring and enforcement of the "comply or explain" statements. We believe that this aspect of company reporting already gets sufficient scrutiny from Institutional Shareholder Committees and voting advisory services.

Yours sincerely,

