

9 October 2009

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
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Dear Mr Hodge

REVIEW OF THE EFFECTIVENESS OF THE COMBINED CODE

On page 15 of your Progress Report and Second Consultation published in July 2009 you call for views on whether or not it would be helpful to provide more guidance on “Board information, development and support” either in the Combined Code or in non-binding guidance.

The purpose of this letter is to repeat a suggestion I have made in response to Sir David Walker’s Report dated 16 July 2009 in respect of BOFIs and to comment on ways in which the idea might be applied more widely to non-financial companies.

My suggestion addresses three of Sir David’s recommendations addressing the need for better quality support for BOFI non-executive directors. In your Progress Report this issue is covered, to some extent, on pages 14 and 15. My concern is the need for truly independent support and advice for independent non-executive directors which in some cases the company secretary may not be able to provide.

My suggestion is as follows:

The Financial Reporting Council, HM Treasury and the Financial Services Authority should sponsor the creation of a several independent corporate providers of services to support the independent non-executive directors of BOFIs, larger companies and/or those operating in highly regulated environments.

The suggestion draws on a parallel in the pensions industry whereby a number of firms have been established providing independent corporate pension trustee services to the trustee boards of pension schemes. In effect a group of experienced pension trustees join together to provide each other with mutual support on a wide range of technical, operational and judgemental issues.

Such pension scheme trustee appointments are made in the normal way but the corporate body is appointed rather than an individual. In practice one identified individual normally fills the role with the support of the corporate body.

I do not think there is a need to prescribe the form of organisation that might offer this corporate non executive director service although in the case of BOFIs the Financial Services Authority would have overall supervisory responsibility for the way in which they operate and the quality and relevance of the support they provide.

In the pensions world corporate trustees provide:

- A genuinely independent voice being tied to neither employee pension scheme contributors and beneficiaries or the sponsoring corporate employer
- A blend of relevant skills including funding and investment management, evaluating the employer covenant and in some cases deficit recovery
- Sound advice and a visible process for reaching, recording, implementing and monitoring decisions

If the idea receives your backing then I believe the market will respond. I suggested to Sir David that initially HM Treasury and the FSA should ***not*** make it mandatory at this stage for all BOFI boards to have at least one corporate non-executive director but that they should support the concept. If the market responds then it might be worth making such an appointment mandatory in due course if the service provide is good.

Similarly I do not think this suggestion should be incorporated in the Combined Code but it could be included in non-binding guidance with the recommendation that it is likely to be of particular relevance to larger companies and/or those in operating highly regulated environments such as BOFIs.

Possible concerns about this concept are:

- commercial confidentiality
- the coherence of the “unitary board” – this recommendation might be construed as creating a new kind of non-executive director with regulatory responsibilities first and foremost rather than the wider responsibilities of a director as required by UK company law.
- potential difficulties over the “cultural fit” of individuals offered by a corporate body – although the Nomination Committee of the BOFI board making the appointment should be able to control this.

I will not attempt to define the concept further in this letter but if you find it attractive I would be pleased to meet you (and perhaps Sir David too) to explore further how it might be made to work in practice.

Yours sincerely

John Collier

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