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Your ref.:
Our ref.: okg

Delivery via e-mail: codereview@frc.org.uk

Dear Mr Hodge,

Consultation on the Combined Code

Norges Bank Investment Management (NBIM) is the investment management division of the Norwegian central bank (Norges Bank) and is responsible for investing the international assets of the Norwegian Government Pension Fund. NBIM also manages the major share of Norges Bank's foreign exchange reserves and the Government Petroleum Insurance Fund.

NBIM holds assets in excess of NOK 2500 billion, (£265 billion) of which approximately £32 billion is invested in UK equities.

We are grateful for the opportunity to take part in the Combined Code review. It appears to us that the FRC goes about this process in a very sensible way. Please allow us to point to a few areas where we think the FRC can take further steps.

Annual elections

NBIM suggests a move to annual elections of all board members. Annual elections will emphasise the accountability of the board towards the owners of the company. At the same time, annual elections will remove the need for complicating the governance landscape by special rules, sometimes contingent on specific events, for the election schedule of chairmen, committee heads or long-serving directors. We are aware of no evidence that overseas markets or UK companies with annual elections have faced undue disturbance around elections, nor that annual terms have produced problematic short-termism on the hand of directors.

Board election is a key instrument by which shareholders are invited to voice its view on the way in which the board is fulfilling its role. An annual vote will, we think, also reinforce the collective responsibility of the board. This is important, since it is usually not the role of shareholders to speculate who within the board made which contributions to the outcomes of the board's deliberations.

Finally, a transition to annual elections addresses the “nine year rule”, since it removes the need to set a maximum tenure before annual elections kick in. The “rule” will then be reduced to a requirement that the board gives an explanation should it suggest that a director continues despite the situation that his or her long tenure may imply for independence.

Comply or explain

We would like to express that NBIM supports the three guiding principles that the FRC applies when assessing the needs for changes to the Combined Code; that the Code be amended when there is a clear need to clarify best practice, that disclosure requirements be rationalised, and that the principles-based style be preserved.

The FRC does right in continuing to build on the “comply or explain” basis. We would go further by stressing that good, specific explanations of deviation can sometimes be more valuable than compliance as the path of least resistance. We therefore encourage companies to choose relevant and comprehensive explanation over compliance when they believe this to be value creative. We do so in recognition that more focus on explanations requires greater effort from investors.

As an important example of the value of explanation, we would like to highlight the “nine year rule” and how we suspect it is often practiced. A nine year tenure should not be interpreted as more than an *indication* that independence may be compromised. What counts for us as investors is whether the individual director, and the board as a whole, can be trusted to fulfil its duties with a sufficiently independent mind. NBIM would therefore rather accept reasonable explanations to long tenures than de facto push out competent and sometimes very independent long-timers.

As the “nine year rule” may have been met by too rigid practices, NBIM agrees with the FRC and the Walker Review that it is a relevant question whether independence criteria including this “rule” have negatively affected knowledge to a too strong degree. We think the answer is not to remove the nine-year milestone, but to look at how it is practiced. Ideally, independence should be thoroughly assessed and demonstrated for all directors up for election.

We appreciate that the FRC recognises the partly parallel consultation on the Walker Review. In our submission to that Review, we chose to highlight issues that are key to the future development of the Combined Code. In order not repeat our comments we would kindly draw your attention to our submission to the Review for more detail.

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Please contact us whenever we can be of utility in the further work of the FRC. We would be delighted to be involved in discussions with you.

Yours sincerely



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Attachment:

NBIM submission on the Walker Review, dated September 30, 2009