



29 September 2009

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Dear Mr Hodge

**Response to the FRC's Review of the Effectiveness of the Combined Code (the "Code"): Progress Report and Second Consultation (July 2009)**

Amlin plc ("Amlin") is the UK domiciled parent company of a non-life insurance underwriting group with offices in the UK (operating through Lloyd's), Bermuda, continental Europe, Illinois USA and Singapore. We are listed on the London Stock Exchange with a market capitalisation at the date of this letter of approximately £1.9 billion. Our shares are constituents of the FTSE 250 index and were, from December 2008 to June 2009, in the FTSE 100.

As Chairman of Amlin, I have participated in consultative meetings on the current Combined Code review with your Chairman and others. Our Company Secretary has also been involved in representations made to you by the Company Secretary's Forum of the Institute of Chartered Secretaries and Administrators. Amlin itself did not make representations on the first stage of your 2009 consultative process.

Rather than attempting to cover all the ground, this submission restricts itself to certain key aspects of the consultation from the perspective of a company such as Amlin. It has been discussed with, and endorsed by, our full Board at its meeting on 23 September 2009.

We reference our comments that follow to the relevant sections of your July consultation paper.

**Background to our views (Introduction pp. 6-7)**

Amlin strongly supports the present Combined Code framework, the principle of "comply or explain", and the Financial Reporting Council's role in the Code's operation. We consider that the Code is generally fit for purpose and

we do not believe that any deficiencies in its text contributed to any material extent to the recent banking crisis. To the extent that the crisis had a governance element, in our view such issues were more matters of Board room behaviour and implementation than an indication of any fundamental problems with the Code itself. Nonetheless we believe that there are areas that could be improved, both in the light of the experience of the financial crisis and for other reasons.

Amlin does not believe that all of the Walker Report's initial recommendations for banks and other (major) financial institutions (termed "BOFIs") (which on the current definition Amlin does not appear to come within) are suitable to be applied to all listed companies. As a general principle nor do we believe in a graduated Code to be applied to varying degrees according to listed companies' size. To the extent that there may be a need for specific additional governance requirements, or recommendations, applying only to BOFIs, we suggest that these apply because of the systemic risk that governance failures in such institutions might represent. Such additional requirements are therefore best dealt with by the FSA in its capacity as a financial regulator rather than as part of a general governance framework which is rightly centred on the responsibilities of companies and their boards to their shareholders.

### **Responsibilities of the chairman and the non-executive directors**

We believe that some further guidance on these roles could be helpful to many boards. To a significant extent, this might be achieved by revisions to the existing "Higgs Suggestions for Good Practice" which were included with the original 2003 edition of the revised Combined Code but have tended to be dropped from subsequent editions. Such guidance should focus on what the roles involve rather than being prescriptive on time commitments, which must necessarily vary widely between the type and complexity of company. We also think that it is important not to require a level of time commitment that precludes executives at other companies taking on a non-executive directorship. Particularly in complex and fast moving industries, such NEDs have a valuable up-to-date and practical perspective.

### **Board balance and composition**

We strongly believe that the best boards contain a balance between NEDs with specialist (in many cases, sector) experience and those with a wider perspective. The requirements of a "specialist" may be somewhat more precise in complex financial services companies, but the principle is a general one. Neither an NED contingent entirely made up entirely of sector specialists (susceptible to "group think" and perhaps therefore lacking the wish to challenge the accepted wisdom of management) nor of diverse generalists (lacking the knowledge and confidence to challenge) is likely to be fully effective.

Amlin believes that the so-called “nine year rule” on independence should be dropped. Deemed “non-independence” makes any NED less useful on a board as they cannot share committee duties and thus the net result of the pressure to re-classify NEDs as non-independent after nine years is that valuable and experienced directors sometimes leave boards earlier than they should do. What is much more important is having a balance between longer standing directors and fresh blood with a new perspective (i.e. “planned and progressive refreshing of the board” – Code Main Principle A.7). In return for dropping the “nine year rule”, this Principle could be bolstered by a Provision that there should usually be at least one new NED every two or three years. Whilst we are generally not in favour of annual re-election of directors (see below), maintaining a requirement for annual re-election of NEDs with more than nine years’ service, even though there would no longer be a presumption of loss of independence, would also continue to allow shareholders to decide whether or not to endorse the board’s view that a particular director is still contributing (in an independent spirit).

It is not clear that lack of technically independent NEDs was any part of the cause of the banking crisis; some commentators have certainly however alleged that lack of relevant experience and knowledge might have been. The same can apply in different ways in other sectors.

### **Frequency of director re-election and votes on a Governance Report**

Amlin finds the arguments for automatic annual re-election of any NED (other than long servers as at present as discussed above) wholly unconvincing and indeed sees positive harm in it as being likely to:

- foster short term thinking
- lead to less rigorous consideration by the Nomination Committee at each retirement of whether an NED should continue (this is the real test in the vast majority of cases as to whether an NED continues, not the shareholder vote). Whilst real and genuine consideration is in our experience given each three years, an annual decision will inevitably become a routine.
- result in a lesser commitment from NEDs. If a company cannot commit (subject to the absence of unforeseen performance or other issues) to an NED to a three year term, the NED will regard him or herself as less committed to continue beyond the current year and thus in some cases may feel much freer to “trade up”, if they have the opportunity every year to decline to stand for re-election.

We therefore oppose annual re-election of the chairman, main board committee chairmen or all directors.

However, we agree with the idea that a 25% vote against the Directors’ Remuneration report should lead to the Chairman of the Remuneration Committee having to stand for re-election at the following year’s AGM. Further, we would generally support a requirement to hold an advisory vote at

each AGM on a Directors' Corporate Governance report. This might foster more engagement from shareholders (who tend at present often to be almost exclusively focused on remuneration aspects of corporate governance, partly as a result of their need to vote on it). Instead of imposing automatic retirement and re-election every year, such a vote could also be used, by exception, as a trigger for the Chairman of the Company having to stand for re-election at the following AGM if 25% or more of voted shares are voted against, in the manner that is suggested for the Remuneration Committee chairman. For completeness, one might have the same requirement of the Audit Committee chairman in the event of the Accounts themselves receiving 25% or more votes against.

For the avoidance of doubt, if any of these "trigger" re-election ideas are adopted, it should be made clear that the holder of the relevant office at the following AGM, whether or not it is the same person as held that office at the previous AGM, must stand for re-election. The lack of a 25% vote against should also be able to be satisfied by the proxy voting figures (ignoring votes withheld) if there is no poll. We are not in favour of a requirement for polls, which can be cumbersome for many companies, being introduced by the back door.

### **Board information development and support**

We strongly support the Walker recommendation that there should be "thematic business awareness sessions for NEDs on a regular basis" and think that this should apply to all types of company. The failure of NEDs to understand sufficiently fully the business models that their companies are operating, which makes it impossible for them to appreciate the business's risks and opportunities, is one of the worst governance failures possible. We therefore support a Provision along these lines being introduced into the Code.

### **Risk management and internal control**

Amlin agrees that risk is under-emphasised in the present Code and associated guidance. Although risk is more central to Amlin, whose business as an insurer is risk management, than to many other types of businesses, we think that this point has general application. However, we suggest that concentration on a requirement for a separate Board Risk Committee is a potentially harmful distraction as it takes the emphasis away from the Board's own role. Whilst responsibility for monitoring risk management processes is often usefully delegated to a Board committee (whether combined with the Audit Committee or a separate committee), the Board alone (on the recommendations, as appropriate, of management) must have the key responsibility for setting risk appetite and must, collectively and individually, have a duty to understand the risks that the company is exposed to. Such understanding is essential not only to enable the Board to do its job of safeguarding the sustainability of the business but for it to play its proper part in the determination and challenging of strategy.

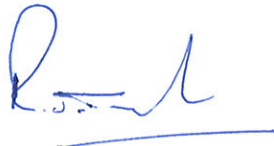
Whilst a requirement for a Chief Risk Officer should not be universal, we suggest that the Code should require all companies who do not have a CRO to state in their Annual Report who is the primary report to the Board on risk management matters. We also support a general expectation that there should be a risk management report within every company's Business Review in its Annual Report

### **Remuneration**

Our general view is that remuneration has been somewhat exaggerated as a contributing factor to the banking crisis and we restrict ourselves in this letter mostly to stating that we do not see the need to make wholesale changes to the Code in this respect. With many other bodies, including the FSA (regarding BOFIs) and the European Union, developing policies on remuneration it may also be prudent to let the somewhat fevered atmosphere settle down somewhat before amending the remuneration sections of the Code. Prescriptive formulae of the appropriate balance between different types of remuneration are unlikely ever to be suitable to all types of listed companies.

If you or your colleagues would like to discuss any of the points in this letter in any more detail, please do not hesitate to contact either our Company Secretary, Charles Pender, or me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R J Taylor', with a horizontal line underneath.

**R J Taylor**  
**Chairman**