Annual Report

Financial Reporting Council

January 2016

Developments in Corporate Governance and Stewardship 2015

The FRC is responsible for promoting high quality corporate governance and reporting to foster investment. We set the UK Corporate Governance and Stewardship Codes as well as UK standards for accounting, auditing and actuarial work. We represent UK interests in international standard-setting. We also monitor and take action to promote the quality of corporate reporting and auditing. We operate independent disciplinary arrangements for accountants and actuaries, and oversee the regulatory activities of the accountancy and actuarial professional bodies.

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Foreword

This Report is my second at the FRC. In my first year, the FRC was focussed on long-term action to deal with the outcome of the global economic crisis. This included improving the management and reporting of risk, and encouraging companies and investors to take a long-term view. This work continues and more recently the emphasis has been to embed the changes we have introduced – working with companies and investors to make sure that the amendments we have made to the UK Corporate Governance Code are translated into effective action and thoughtful reporting on risk, internal control and viability. What I hear from companies is that these changes have prompted fruitful conversation both internally and with investors. This is pleasing and I look forward to seeing more of how this is translated into practice in the forthcoming reporting season.

In order to encourage the best results from these changes, we do not intend to make substantial revisions to the UK Corporate Governance Code for the next three years. The minor revisions we currently propose are a result of implementing the EU Audit Regulation and Directive. We have deliberately kept these to a minimum and proposed revisions to our Guidance on Audit Committees to make it clearer and explain the changes we have made.

Our future work on Corporate Governance will be taken forward through market-led and collaborative initiatives. In the year ahead we will focus on corporate culture. We are very pleased with the response to our call to participate in the Culture Coalition, issued in September. We have found a real willingness from a wide range of organisations – who might not otherwise have found reason to work together – to collaborate with us and with each other. People are being generous with their time and contributions. This cross-sectoral and cross-functioning working will be integral to the success of the project. We are now gathering a wide range of evidence from research and specific events. I emphasise that our aim is not to codify our findings in any way. What we wish to offer are observations which may be helpful to boards in finding their own answers to important questions of establishing, shaping and monitoring corporate culture. Following this we intend to review the FRC's *Guidance on Board Effectiveness* to ensure culture is a prominent theme.

There is clearly an essential thread linking the board, senior management and employees whereby all take responsibility for their actions on behalf of the company. This should be reinforced by appropriate stewardship from investors and the observations of other stakeholders, such as customers and suppliers, should be noted. They can provide a view which is not obscured by an occasionally legalistic or commercial approach. I cannot pretend this is easy, but ensuring trustworthy behaviour by all involved will be essential to fostering further long-term investment in the UK.

In October the FRC released a discussion paper on board succession planning. Done well, it necessitates an integrated approach, which can take time to embed. I encourage you to respond to the questions we raise in the paper. There is of course a link between succession planning and corporate culture and we will report our findings. We will not be taking a prescriptive approach.

The UK Stewardship Code has helped to raise the profile of stewardship, has normalised discussions about stewardship in the investment chain and has led to improvements in the quality and quantity of engagement between investors and companies. We wish to maintain momentum by ensuring that signing up to the Code is a true marker of commitment. We announced in December that we would scrutinise the Code signatory statements to distinguish those whose reporting is of high quality and those where improvement is required. We will write privately to all signatories giving our assessment of their statements and allow time to make improvements. We intend to make the final assessments public in summer 2016. I hope that signatories will wish to respond positively. We intend to review the outcome of our actions in order to inform any revision of the Code required to implement the revised Shareholder Rights Directive.

The FRC would like to thank everyone who has directly or indirectly contributed to the report.

SIR WINFRIED BISCHOFF
Chairman, Financial Reporting Council
January 2016

Introduction and Overall Assessment

The Developments Report has four main purposes: to give an assessment of corporate governance and stewardship in the UK; to report on the quality of compliance with, and reporting against, the two Codes; to give our findings on the quality of engagement between companies and shareholders; and to indicate to the market where we would like to see changes in governance behaviour or reporting. In addition, the Report summarises and comments on other relevant changes over the last 12 months, such as developments in the market and regulatory framework.

The detailed assessment that follows in the remainder of this report draws on new and publicly available research and surveys, supplemented by a review of annual reports and UK Stewardship Code statements. We have also held meetings with many investors, companies and other interested parties.

Corporate Governance Code

Following the significant changes to the UK Corporate Governance Code in 2014, this year has been one of consolidation. The quality of explanations has improved and compliance with the Code remains high, with 90 per cent of FTSE 350 companies reporting that they either comply with all, or all but one or two, of its provisions. Strict compliance has slightly dropped which appears to result from a combination of newly listed companies and FTSE 100 firms deciding to await the finalisation of the implementation into UK law of the EU's ARD. Early adoption of the 2014 Code changes has been low. Our assessment is that this reflects the substantial and complex nature of 2014 changes.

Our 2016/19 strategy is to allow time for the recent changes to embed, to work with the market in doing so and not to consider further changes (other than those required as a result of the implementation of the Audit Regulation and Directive) to the Code until 2019. As such, future work is likely to be reflected in guidance or through other avenues.

Culture

The preface of the Code makes it clear that there is a role for the board in 'establishing the culture, values and ethics of the company' and in setting the 'tone from the top'. The FRC recognises the challenges that boards face when addressing the culture of their companies and in 2015 brought together a 'culture coalition' to highlight effective approaches and share good practice. The FRC is looking to understand the role of boards in shaping and embedding a desired culture, and will publish its findings in summer 2016.

Stewardship Code

Our chief aim remains to foster a better quality of monitoring and engagement between companies and investors, which will assist in delivering better company performance and thus better returns to investors. While the FRC understands that development of a culture of stewardship will take time, the reporting of too many signatories does not demonstrate that they are following through on their commitment. 2015 was a relatively quiet year with few contentious stewardship issues. However there is evidence that action is needed to ensure appropriate momentum is maintained in implementing the Stewardship Code, with a mixed picture of progress. In December we stated that we would be looking to distinguish between the reporting of signatories and in summer 2016 will make a public assessment on the basis of their reporting. We will reflect on the outcome in developing proposals as to the implementation of the Shareholder Rights Directive.

Governance of Listed Companies

This section of the report sets out how the UK Corporate Governance Code has been implemented during 2015 as well as providing an assessment of the quality of reporting on corporate governance. Details are provided on compliance with the key principles and provisions introduced in 2012, which all companies should now be observing or explaining against, as well as reviewing early adoption of the changes to the Code introduced in 2014.

During 2015 we continued to emphasise the value of good quality explanations in achieving effective governance and compliance with the Code's 'comply or explain' ethos. The FRC has previously set out the criteria for a clear explanation (see page 6) and in this report we continue to assess performance against these.

Overall compliance rates

Compliance with Code provisions remains high, with 90 per cent of FTSE 350 companies reporting that they were either complying with all, or all but one or two, of its 54 provisions.

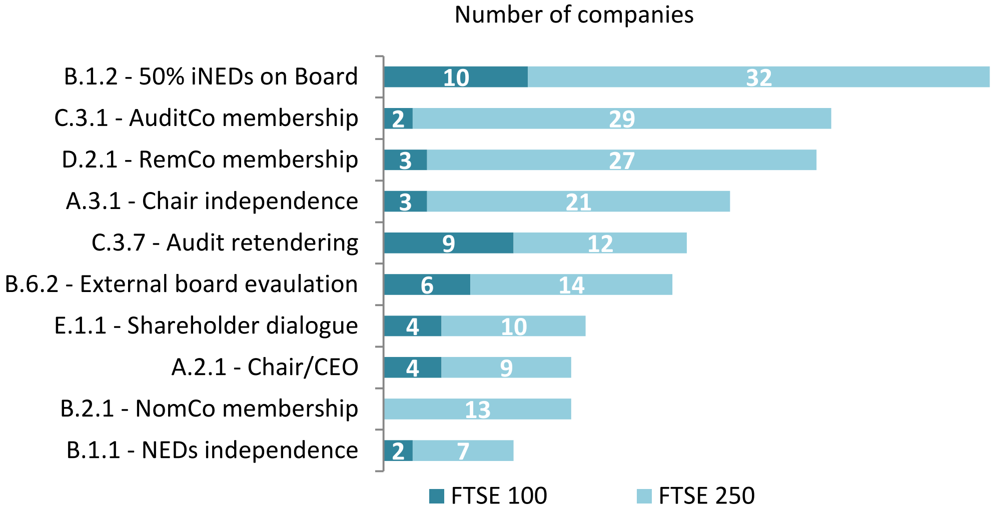
Grant Thornton's annual survey[1] found 57 per cent reported compliance (without explanation) with all Code provisions, a decrease of four per cent on 2014. This appears to result from a combination of newly listed companies (who have yet to observe all governance requirements for listed companies) and FTSE 100 firms deciding to await the finalisation of the implementation into UK law of the EU's Audit Regulation and Directive in terms of complying with the Code's audit retendering provision.

There have been a number of entrants to the market – two in the FTSE 100 and 21 in the FTSE 250 – and one of each reported full compliance with the Code. For the FTSE 250 the 'marked positive trend among established companies ... was diluted by the weaker level of compliance among new entrants'.[2] Most of these entrants had recently undergone an initial public offering (IPO) and were still developing their governance arrangements. Although there was a large number of newly listed companies who had yet to fully implement the Code it raises the question whether these companies should have been better prepared to comply prior to listing.

The table overleaf lists the top 10 areas of non-compliance and where explanation should therefore be given. Code provision B.1.2, which states that at least half the board (excluding the chairman) should be independent, remains the lowest rated in terms of compliance among FTSE 350 companies. The FRC's assessment of the quality of the explanations given for non-compliance with this provision is discussed in the next section.

1 Trust and integrity – loud and clear?; Grant Thornton; December 2015
2 Trust and integrity – loud and clear?; Grant Thornton; December 2015

Table: Top 10 areas of non-compliance with the Code, requiring explanation, as reported by FTSE 350 companies in their 2014/2015 annual report



Source: Extract of table from Practical Law's Annual Reporting and AGMs 2014: What's Market Practice? paper published November 2015. Data as at 31 October 2015.

Data compiled by Manifest[3] on behalf of the FRC shows that, in respect of board and committee composition, compliance levels among companies on the FTSE Small Cap and Fledgling indices were again, on the whole, consistent with those of larger companies. The figures in the table below show an improvement from last year for the majority of provisions.

Table: Compliance with selected provisions of the UK Corporate Governance Code

Code provision	FTSE 350 companies		Smaller companies	
	2015	2014	2015	2014
A.2.1 – Separate chairman and CEO	99%	96%	99%	99%
B.1.2 – Met minimum provisions for number of independent NEDs	92%	90%	88%	90%
C.3.1 – Met minimum provisions for audit committee composition	97%	92%	94%	93%
D.2.1 – Met minimum provisions for remuneration committee composition	95%	91%	90%	89%
B.2.1 – Met minimum provisions for nomination committee composition	98%	96%	97%	99%

Source: Manifest (date range 1 September 2014 – 31 August 2015)

Note: There are different requirements for FTSE 350 and smaller companies regarding the minimum number of independent directors and the minimum requirements for board and committee composition (for example, for FTSE 350 companies independent directors should make up at least half the board, while smaller companies are only expected to have at least two independent directors).

[3] Manifest looked at a sample of 346 from the FTSE 350 Index, 286 from the Small Cap Index and 23 from the Fledgling Index.

Explanations

> Given that the principle of 'comply or explain' provides flexibility for companies to depart from a Code provision, it is important that a clear explanation is provided so that shareholders can assess whether they are content with the governance arrangements which the company has put in place.

The Code contains guidance on 'comply or explain' which describes the features which should ensure a meaningful explanation. This is to provide a benchmark for companies when providing explanations and shareholders when assessing them. These are: that the explanation should set out the background, provide a clear rationale for the action being taken, and describe any mitigating activities. In addition, where deviation from a particular provision is intended to be limited in time, the explanation should indicate when the company expects to conform with the provision.

Grant Thornton point to a 'notable rise' in the quality of explanations with almost 70 per cent of the relevant FTSE 350 companies setting out their reasons fully. To allow a more granular comparison between this year and last, a review of the explanations in the same two areas of non-compliance has been conducted. Code Provision B.1.2 – where less than half the board of a company, excluding the chairman, is comprised of independent non-executive directors – is the provision most frequently not complied with (see table on page 4). Code Provision A.2.1 – where the roles of the chairman and chief executive are combined – is 8th on the list of provisions not complied with.

Of the two provisions assessed here, while there has been an overall improvement, explanations were better where companies depart from the Code due to force of circumstances – such as directors leaving the board at short notice. It is again true that poor succession planning was arguably a contributing factor for a number of the companies where non-compliance was only short-term and that returned to compliance during the course of the year or were taking action to do so; putting our work on board succession planning into context.

Explanations where less than half the board, excluding the chairman, comprises independent non-executive directors (B.1.2)

In 2015 there were 42 FTSE 350 companies that did not comply with this provision (up from 26 in 2014) and as with last year just under half had returned to having more than 50 per cent of the board as independent non-executive directors at the time their annual report and accounts was published. On the whole non-compliance was usually as a result of retirements rather than a specific wish to not comply. The following example details one such explanation:

> *"Board Composition*
> The Board currently comprises the Chairman, six non-executive directors and six executive directors; additionally, XX served as a non-executive director throughout the year to 30 September 2014. … The Board, having given thorough consideration to the matter, considers the other five non-executive directors to be independent. XX joined the Board in 2004 and served on the Board until 30 September 2014. XX had served on the Board for more than nine years by the date of retirement … Taking into consideration XX's independence of character and judgement, asset management knowledge and significant major plc board experience, the Board is of the opinion that XX remained an independent non-executive director until the date of retirement.
>
> *Board Changes*
> We did not comply during the year, nor do we currently comply, with the Code requirements on the number of independent directors. The Board remains of the

> opinion that its size and composition should reflect the needs of the business and seeks to achieve this in compliance with the Code."

In the context of this provision it would be of more help to investors if greater transparency was given on why the company believes the composition of the board is appropriate, bearing in mind that the Code asks that companies explain what mitigating actions the board has put in place to ensure a sufficient degree of independence is maintained.

Explanations where companies have a combined chairman and CEO (A.2.1)

This year there were 13 companies in the FTSE 350 that had one individual as both chairman and CEO, up from ten in 2014. In eight cases this was explained as a temporary arrangement, and the majority arose when one of the roles became vacant sooner than expected. An effective example of disclosure was provided by a company that had a three-month gap between the CEO leaving and the new one joining so merged the roles. Although a temporary measure, as it recognised the importance of robust governance arrangements in this circumstance, the company revised the framework of delegated authorities during this interim period to ensure that no individual had unfettered powers of decision making.

In the five companies where the combination of the two roles was open-ended (i.e. no time limit was mentioned in their explanations) the majority of cases offered no obvious rationale or mitigating arrangements. One exception to this was a company which detailed that:

> The Board notes the Code principle stating that there be a clear division of responsibilities at the head of the Company and provision that the roles of Chairman and Chief Executive not be exercised by the same individual. In order to successfully lead the Company through the period of flux as a result of its flotation to the London Stock Exchange and upgrade to a premium listing, the Board, following due consideration, … determined that it was, and remains to be, in the best interests of the Company and Group to retain XX as an Executive Chairman.
>
> The Board, with assistance from the Nomination Committee, will keep this arrangement under review. It is envisaged that XX will become Non-Executive Chairman once the business transformation is complete creating a vacancy for, and thereby separation of, the role of Chief Executive Officer. As a result, the division of responsibilities between the Chairman and Chief Executive will be clearly established, set out in writing and agreed by the Board.
>
> The Directors consider that the structure of the Board and the integrity of the individual Directors ensures that no single individual or group dominates the decision making process. There is a common purpose of promoting the overall success of XX with a unified vision of the definitions of success, the core strategic principles, and the understanding, alignment and mitigation of risks.

There has been an improvement this year in the overall quality of explanations in relation to non-compliance with Code provision A.2.1. However, those companies which have very long standing breaches have not provided much detail on mitigations.

2012 Code Changes

The changes to the Code in 2012 were designed to give investors greater insight into what company boards and audit committees were doing to promote their interests, and to provide them with a better basis for engagement.

Audit Tendering

The Code revision in 2012 added a recommendation that FTSE 350 companies should put their external audit contract out to tender at least every ten years. 46 FTSE 350 companies put their external audit engagement out to tender in the period to 31 October 2015 (up from 27 previously), with 36 of those companies changing auditors as a result.[4]

Since the introduction of retendering in the Code there have been related external regulatory changes with the Competition and Markets Authority's Order now requiring FTSE 350 companies to put their audits out to tender at least every ten years. The EU's Audit Regulation and Directive means, from June 2016, that it will be mandatory to retender the audit at least every ten years for public interest entities and change every 20, subject to transitional arrangements. We have consulted on whether to retain the 'comply or explain' tendering provision in the Code in light of these developments.

Among the governance surveys we reviewed, Grant Thornton's report notes that in 2008 just 2 per cent of FTSE 350 companies 'gave good and detailed disclosures on external auditor appointments; this year the proportion reached over 50 per cent. Improvements include better clarity on company policy and more detailed insight into the processes by which auditor effectiveness and independence are assessed.'[5] However, fewer companies disclosed the expected timing of their next audit tender despite 34 per cent of the FTSE 350 having not changed their auditor for more than ten years, while a further 26 per cent failed to state when their auditor was appointed or rotated. It is expected that there will be a significant improvement in reporting on this next year.

Audit Committee Reporting

The 2012 changes to the Code introduced requirements for audit committees to provide more detail on the work they do. This included:

- descriptions of the significant issues considered by the audit committee in relation to the financial statements and how they were addressed;
- how the audit committee assessed the effectiveness of the external audit process[6]; and
- their approach to appointing the auditor and safeguarding objectivity and independence relative to the use of non-audit services.

Grant Thornton's review found that overall disclosures in this area have improved with only four companies in the FTSE 350 not giving an explanation. For instance, 72 per cent of companies now give a good or detailed explanation (versus 65 per cent in 2014) in relation to first bullet above.[7]

In contrast, Deloitte's survey[8] of 100 premium-listed companies found that most could still improve their audit committee reporting as only 23 per cent included 'comprehensive descriptions' of the significant financial reporting issues considered by the committee. Moreover, only 9 per cent gave detailed insights into how they had assessed the effectiveness of the eternal audit process.

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4 Annual Reporting and AGMs 2015: What's Market Practice?; Practical Law; November 2015
5 Trust and integrity – loud and clear?; Grant Thornton; December 2015
6 FRC has published a Practice Aid on this area – https://frc.org.uk/Our-Work/Publications/Audit-and-Assurance-Team/Audit-Quality-Practice-Aid-for-Audit-Committee-(1).pdf
7 Trust and integrity – loud and clear?; Grant Thornton; December 2015
8 Annual report insights 2015 – The reporting landscape; Deloitte; December 2015

This discrepancy is likely a result of the sample each has chosen. Grant Thornton surveyed 312 of the FTSE 350 while Deloitte reviewed 100 UK listed companies with a premium listing of equity shares. This consisted of 57 companies in the FTSE 350 and 43 smaller companies from outside the FTSE 350.

Boardroom Diversity

The 2012 edition of the Code introduced the expectation that listed companies should set out in their annual reports their policy on boardroom diversity and report on progress against any measurable objectives they had set.

This has led to an improvement in the quality of reporting on gender diversity. Grant Thornton found there had been an increase in the number of FTSE 100 companies that provide detailed explanations of their gender diversity policy and the considerations given to gender during the board appointment process. However, six still made no mention of gender diversity at all. For the FTSE 250 this was true of 15 companies and there was a drop in the quality of detailed explanations this year.

Although gender is an important aspect of diversity, wider diversity characteristics are gaining greater attention. The preface to the 2014 Code states that race, experience and approach are also important when determining the appropriate balance of skills and attributes that are needed. This balance is key to ensuring effective stakeholder engagement and to delivering the business strategy. Grant Thornton noted that this is the first year that the majority of FTSE 350 companies have addressed the board's diversity in its wider sense in their annual reports: 76 per cent in the FTSE 100 and 44 per cent in the FTSE 250 discuss other aspects of boardroom diversity. However, there remains a disappointing number of companies (including 24 in the FTSE 100) who despite recognition of a broader concept of diversity in the Code, still make no reference to this subject.[9]

'Fair, balanced and understandable'

The 2012 update to the Code asked boards to confirm that the company's annual report and accounts taken as a whole are fair, balanced and understandable (FBU), a primary outcome of which is for the narrative sections of the annual report to reflect more accurately the company's position, performance and prospects.

The Grant Thornton review of all FTSE 350 annual reports found that all companies bar two (2014: 25) now include such a statement. While 'two thirds still give little or no insight into how they substantiate the claim, there are a few, slightly up from last year, that have embraced the intent of the Code to supply information about the various criteria used to support their statement.'[10]

Institute of Chartered Accountants in Scotland conducted research[11] on the impact of FBU on corporate reporting and found that it is viewed positively by preparers and auditors. They commented that while "its impact on 'front-half' content is perceived as relatively modest, the impact of FBU on the presentation of content and on the extent to which the annual report presents a cohesive 'story' is viewed as significant. In many cases, the requirement is also perceived to have resulted in a more conscious and reflective process for considering whether annual reports are FBU." It is clear that reporting has improved here, although providing further transparency around how the board has reached its judgement may assist investors' understanding.

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[9] Trust and integrity – loud and clear?; Grant Thornton; December 2015
[10] Trust and integrity – loud and clear?; Grant Thornton; December 2015
[11] Fair, Balanced and Understandable: Enhancing Corporate Reporting and Assurance?; ICAS; January 2016

2014 Code Changes

The changes to the Code in 2014 were designed to strengthen the focus of companies and investors on the longer term and sustainable value creation. Measures were taken to improve the quality of information investors receive about the long-term health, strategy and risk management of listed companies. There were also changes to remuneration disclosures to focus companies on aligning reward with sustained value creation.

Risk management and internal control

The 2014 Code changes require companies to:

- state whether they consider it appropriate to adopt the going concern basis of accounting and identify any material uncertainties to their ability to continue to do so;
- robustly assess their principal risks and explain how they are being managed or mitigated;
- state whether they believe they will be able to continue in operation and meet their liabilities taking account of their current position and principal risks, and specify the period covered by this statement and why they consider it appropriate. It is expected that the period assessed will be significantly longer than 12 months; and
- monitor their risk management and internal control systems and, at least annually, carry out a review of their effectiveness, and report on that review in the annual report.

As these changes applied to financial years beginning on or after 1 October 2014, assessment has been on the quality of reporting by early adopters and those September year end accounts which were published by 31 December 2015.

Only a small number of companies have chosen to adopt these Code changes early. Most have noted, usually within the Audit Committee report, that they are aware of the new provisions or that they have used 2015 to prepare. Among the early adopters' statements, there was some good detail on how the period was chosen and what principal risks were considered and mitigated.

The time period covered in these statements varied between three or five years, although one company selected two years to fit with their existing business cycle. Two companies (one each from the FTSE 100 and 250) who will report fully next year have indicated the time period they will use – three and five years respectively.

EY, in liaison with the FRC, carried out a survey of market participants over the final quarter of 2015 to assess their preparedness to report on the Code's revised risk management and internal control related provisions. The findings which we have been shown suggest FTSE 350 companies were more prepared, although a third have not yet fully considered how they will comply. Risk appetite, the quantification of risk and assessing the effect of internal control were the three significant challenges which all respondents highlighted. It is expected that this survey will be carried out again in 2016.

Remuneration

Main Principle D.1 was revised to ensure greater emphasis was placed on ensuring that remuneration policies were designed with the long-term success of the company in mind. Deloitte reported that there has been an increase in the number of companies where longer time horizons have been incorporated. For example, 51 per cent of FTSE 100 plans now include a further holding period for at least part of the award compared to 37 per cent in 2015 and c.20 per cent in 2013.[12]

[12] Your Guide – Directors' remuneration in FTSE 100 and 250 companies; Deloitte; October 2015

The 2014 revisions to the Code also included a recommendation that companies should put in place arrangements that will enable them to recover or withhold variable pay when appropriate to do so, and should consider appropriate vesting and holding periods for deferred remuneration. Deloitte reported that these are now in place in relation to both annual and long-term incentive plans in around 90 per cent of FTSE 100 companies and 85 per cent of the FTSE 250. Companies outlined that long-term share awards may be clawed back in over 70 per cent of FTSE 100 companies and malus may be applied in 84 per cent of companies.[13]

These improvements are encouraging and the FRC will continue to review how market practice develops. Companies will need to ensure that such provisions are invoked where cases that warrant clawback and/or malus occur, so as not to undermine the progress that has been made.

Shareholder engagement

The 2014 Code introduced a requirement, under provision E.2.2, in relation to companies explaining, when publishing meeting results, how they intend to engage with shareholders when a significant percentage of them have voted against any resolution. The intention is to change behaviour so that companies explain how they intend to engage with shareholders in order to assess their concerns as well as setting-out how they intend to respond to those concerns, albeit reporting on these may occur at different times.

The table below shows the voting results for the major resolutions at AGMs held in 2015 which had significant shareholder opposition (20 per cent has been used as an indicative and high threshold. It is for directors to judge significant in the circumstances of the share ownership of their company). Only four companies provided details on their proposed engagement with shareholders in the AGM results announcement. Three of these disclosures related to remuneration report resolutions and one to the allotment of shares. We expect to see a sizeable increase in reporting within AGM results in 2016. Companies with significant minority votes on remuneration matters are already required (by the 2013 remuneration legalisation) to refer to these in their next annual report.

Table: Significant Minority Voting at FTSE 350 AGMs

Resolution Type	Number of resolutions voted against by 20% or more of shareholders		Number Defeated	
	2015	*2014*	*2015*	*2014*
Audit & Reporting	–	2	–	–
Corporate Actions	1	1	–	–
Director elections	4	16	–	–
Issue of shares & pre-emption rights	11	12	1	2
Remuneration – policy	4	13	–	1
Remuneration – report	24	26	1	2
Shareholder Rights	10	7	1	2
TOTALS	**54**	**77**	**3**	**7**

Source: Manifest (2015)

13 Your Guide – Directors' remuneration in FTSE 100 and 250 companies; Deloitte; October 2015

Stewardship and Engagement

Introduction

The UK Stewardship Code has been in place since 2010 and now has 302 signatories. The Code has helped to raise the profile of stewardship discussions in the investment chain. The FRC has also been pleased to see improvements in the quality and quantity of investor monitoring and engagement. However, there is more still to be done to promote best practice. To maintain momentum we need to ensure that signing up to the UK Stewardship Code is a true marker of commitment.

Overall the quality of reporting against the Code does not give a clear enough picture of the approach to stewardship. Insufficient clarity by signatories can make it difficult for clients to assess managers and their different approaches to stewardship. The Code is voluntary and operates on a 'comply or explain' basis, but once they have joined, signatories should be committing to adopting and reporting against the principles with appropriate explanations where needed. Meaningful reporting helps increase transparency in the market and encourage better quality engagement.

Assessment of signatory statements

Our assessment has shown that the quality of signatory statements varies considerably. We assessed signatory statements against the principles and guidance, with a focus on ensuring that statements provide an informative summary of the approach taken. In the past we have highlighted concerns with particular principles, but we also wish to ensure that we improve reporting by all signatories across the seven principles.

Comply or explain

There has been a small decrease in the number of companies strictly complying with the provisions of the UK Corporate Governance Code. However, 'comply or explain' is not a binary system; it requires all of those in the investment chain to make judgements about governance decisions made by a company, and whether explanations are properly justified. This is an important part of the UK, and European, corporate governance framework and we wish to ensure that 'comply or explain' is also reinforced through the UK Stewardship Code.

For this reason, we announced in December that we would move to tier signatories publicly. We will be contacting signatories individually to outline where their statements need to improve. In summer 2016 we will announce the results of this work. Tier 1 signatories will be those that meet our reporting expectations and provide evidence of the implementation of their approach to stewardship. We will pay particular attention to information on conflicts of interest disclosures, evidence of engagement and the approach to resourcing and integration of stewardship. Tier 2 signatories will be those where improvements are needed.

Improved clarity should help asset owners judge how well their fund manager is delivering on its commitments under the UK Stewardship Code and assist those issuing mandates to asset managers to make a better informed choice. It should also help:

- companies to understand the approach and expectations of their major shareholders;
- fund managers to understand and meet the expectations of current / potential clients and
- investors interested in collective engagement to identify like-minded institutions.

Asset owners can play a very important role in the market by driving demand for stewardship. Notably, about half of the more recent signatories to the UK Stewardship Code have been asset owners, but managers reported in The Investment Association's (IA) survey[14] looking at adherence to the Code shows a decrease in the proportion of mandates referring to stewardship, to 74 per cent from 83 per cent. This contrasts with the Pensions and Lifetime Savings Association (PLSA) Stewardship Survey finding, where 68 per cent of respondents stated that they set out stewardship expectations in their mandates for managers, up from 51 per cent in 2014 and 38 per cent in 2013. This may reflect a difference in sample group and size. In addition, we hear from some asset owners that there is an assumption that asset managers, as professional advisers, are already carrying out stewardship activity on their behalf. We hope that our efforts to increase transparency in the market will help asset owners better understand the stewardship activities being carried out in their name.

Engagement in the 2015 AGM season

The 2015 AGM season was generally uneventful. There were no new significant regulatory changes affecting investors and companies. The feedback we received on engagement in 2015 was generally positive.

Over a quarter of investors responding to the IA survey felt that the quality of dialogue had improved since 2013 and that companies were more responsive. A separate survey of company representatives conducted by the Institute of Chartered Secretaries and Administrators (ICSA) for the FRC was also generally positive, but with some concerns about the investors that have not improved their stewardship practices. 58 per cent of respondents to this survey reported more investor stewardship activity since the introduction of the UK Stewardship Code.

In a recent Investor Relations Society (IR Society) survey, carried out for the FRC, 15 per cent of companies reported investors asking for much more engagement with senior management and 44 per cent experienced more. For meetings with chairmen / non-executive directors, 10 per cent of companies reported investors seeking much more and 24 per cent more engagement. 42 per cent felt that there was no difference in the quality of engagement, but 50 per cent of respondents already felt that the quality of engagement was good or excellent.

Respondents to the ICSA survey felt that engagement had helped them make a better decision some of the time (77 per cent) or most of the time (12 per cent) or all of the time (2 per cent). Almost 90 per cent of respondents to the IA survey stated that they were satisfied with the outcome of their engagement. The IA survey found that investors were completely satisfied where they were able to effect change, but these statistics may reflect the fact that often it is the quality and constructive nature of the engagement that is important, rather than the engagement leading to particular changes.

Each year the IA survey asks investors for in depth feedback on a small number of company engagement case studies. This year the survey, for the first time, asked those companies subject to the case studies to provide a statement responding to the investor feedback. The case studies tend to focus on companies facing more complex engagement issues and skew to larger companies to allow sufficient investor coverage. The investor and company feedback details interesting frank discussions and provides a nuanced view of the engagement taking place.

[14] Adherence to the FRC's Stewardship Code: At 30 September 2014; IMA; June 2015

In the context of the FRC's approach to tiering signatories, the majority of company respondents to the ICSA survey felt that signatories that do not follow through on their commitment should not be penalised, but that those which clearly demonstrate that they comply to a high standard should be recognised.

The preference for one-to-one meetings continues, at least for initial discussions. The IR Society survey found that 15 per cent of respondents had taken part in many more, and 38 per cent in more, one-to-one meetings during the last 12 months. In contrast, almost ten percent had experienced fewer capital market days and conferences.

It was disappointing to read in Grant Thornton's review of FTSE 350 annual reports that more chairmen and senior independent directors were available for meetings with shareholders but that few were requested. This may be a result of differing thresholds for engagement, but we consider it important for companies to continue to approach their shareholders and for shareholders to maintain dialogue with companies when business is going well in addition to when there are specific issues to be addressed.

Nearly a quarter of FTSE 350 companies submitted a revised remuneration policy for a shareholder vote in 2015, rather than waiting the full three years allowed by the legislation; generally these revisions were supported by shareholders. Remuneration remained the topic most engaged upon, yet survey responses from companies and investors noted that this is viewed as a less important engagement topic than performance, leadership, strategy and culture.

Company and investor expectations and reporting

There is a continuing expectation gap between companies and investors. Companies expect their investors to engage according to their ownership level, with the ICSA survey finding that 58 per cent define investor responsibility by proportion of company capital held. On the other hand, investors are more likely to monitor according to the composition of the portfolio and to prioritise engagement with companies with performance concerns or in which they are overweight. This difference is not new, but it can lead to misunderstandings between companies and investors. It is important that companies and investors are willing to discuss their individual approaches to engagement to build understanding and trust in the market.

In addition, companies and investors with different time horizons and investment styles will have different approaches to stewardship. It is important that companies and investors are able to understand each other's approach, which can be helped in part through their reporting. Building this understanding is an ongoing challenge, and to a large degree, subject to the quality of resource assigned in each organisation.

In their most recent set of annual reports, all FTSE 350 companies provided some insight about the steps taken to understand the views of shareholders, but the percentage providing good or detailed information decreased from 64 per cent to 55 per cent.[15] The reasons for this are unclear, but may relate to preparations for reporting against the 2014 Code changes. Those changes encourage discussions with investors in the context of significant levels of votes against resolutions. Once companies have begun reporting against these requirements we would expect the quality and quantity to increase significantly.

The IA survey also noted a decrease in the investors that notify companies in advance of votes against or abstentions. In the context of the 2014 UK Corporate Governance Code change, companies and investors will be asked to engage more in the context of significant minority votes against in addition to the engagement they had already carried out. We strongly

[15] Trust and integrity – loud and clear?; Grant Thornton; December 2015

encourage investors to engage with companies and notify them before such voting. Companies find this information very useful and it helps to build an open dialogue.

In assisting with this engagement, we hope that investors and companies will continue to try to coordinate better their processes. Interestingly, the IA survey found that 37 per cent of asset managers involved their portfolio managers in all voting decisions compared to 27 per cent in the previous year. We understand that the Investor Forum is looking at ways to improve coordination within the investor relations and company secretary functions in companies and the governance and fund management functions within investor organisations.

Collective engagement

The Investor Forum has now been in place for over a year. It has been involved in nine engagements, covering a wide range of issues, from governance to capital structure. It is looking to become more proactive in its engagements and we encourage those with concerns about companies to approach the Forum to see if collective engagement may be appropriate.

A number of asset owners have also publicly collectively engaged very successfully in 2015. The ‘Aiming for A’ initiative involved the filing of two shareholder resolutions, at BP and Shell. These resolutions followed a period of engagement with extractives and utilities companies on their management of the risks and opportunities presented by climate change. The shareholder resolutions were ultimately supported by the boards of each company, and overwhelmingly approved by shareholders. The resolutions direct the companies to include in their annual reports additional information on climate strategy, including emissions management, portfolio resilience and key performance indicators.

Proxy advisors

Last year’s report highlighted mixed reports about the quality of reporting, engagement and voting outcomes which result from the relationship between some proxy advisors, their clients and UK companies. We considered the role we might play in overcoming problems of perception and communication in this area and convened two roundtables of proxy advisors, company and investor representatives.

While some participants mentioned greater and more constructive discussions with proxy advisors, other feedback we have received points to ongoing tensions around a rigid box-ticking approach and insufficient attention to ‘comply or explain’. There is also ongoing feedback that the bunching of reporting and AGMs overloads the system, putting pressure on resources which can affect the quality of engagement and advice.

The key messages from the roundtables were that:

- proxy advisors provide an important service;
- some disagreement within the system is to be expected;
- a company’s ownership structure may affect its experience of proxy advisors, e.g. some overseas owners may be more reliant on advice; and
- more work could be done on promoting good practice.

It is important that proxy advisors do not take a formulaic approach and instead make judgements and recommendations on the basis of all the evidence available. Companies should be given adequate opportunity to respond to issues when they arise and should do so constructively. The FRC will continue to monitor practices in this area.

Voting and ownership

The role of passive management continues to grow in the UK market, however, active strategies still account for more than 70 per cent of the assets under management.[16] The Office of National Statistics found that composition of share ownership in 2014 was roughly similar to that in 2012.[17] The downward trend of ownership of UK companies by insurance companies and pension funds has continued and foreign investors comprised the largest proportion of ownership, with 54 per cent. The increasingly global nature of investor holdings raises challenges to engagement which we continue to assess.

2015 saw a continued increase in voting activity. ISS noted the highest level of shareholder voting since they started releasing data in 2008. Although average turnout has levelled off, Europe registered an average turnout of 67 percent, with a 73 per cent voter level in the UK.[18]

We continue to hear concerns with the functioning of voting in the investment chain. The Shareholder Voting Working Group released for consultation 'Shareholder proxy voting: Discussion paper on potential progress in transparency'.[19] A number of responses were received and we understand that the group intends to contact respondents shortly with an overview of their deliberations and consideration of next steps.

Next steps

In 2016 we will continue to broaden and deepen our engagement with the corporate and investor communities. To underpin closer scrutiny of adherence to the Code we compiled the existing academic literature on stewardship, which was kindly verified by an academic. Our review of the research found some evidence that stewardship and the promotion of good governance can support value retention, but research is more inconclusive on establishing a causal relationship with outperformance. Given the evidence, we are working with others to build an environment conducive to better stewardship, especially as negotiations on the European Shareholder Rights Directive progress. Our final assessment of signatory statements in the form of a tiering will be released in summer. We expect to review the outcome of these activities as we consider any necessary updates to the Code to implement the revised Shareholder Rights Directive.

We will also continue to encourage companies to report effectively on their strategy, performance and governance to give investors the information they need to make an informed choice about allocation of their capital or potential areas for engagement. Given our mission statement, we want to ensure that the perspective of long-term investors is incorporated into our activities and that we are increasing our outreach to international investors active in the UK market. As the new requirements for companies to provide information about engagement with investors in instances of significant votes against come into effect we will look at how we can highlight best practice.

16 'Asset Management in the UK 2014-2015'; The Investment Association Annual Survey; June 2015
17 'Ownership of quoted shares for UK domiciled companies; 2014' Office for National Statistics; September 2015
18 European Voting Results Report; ISS; September 2015
19 'Shareholder proxy voting: Discussion paper on potential progress in transparency'; Shareholder Voting Working Group; July 2015

Other Corporate Governance and Stewardship Developments

This section summarises the main activities in 2015 related to corporate governance and stewardship, and indicates the further developments that are expected in 2016 and beyond.

Audit Regulation and Directive

In April 2014, the European Parliament and the Council of the European Union issued Regulation EU/537/2014 covering specific requirements regarding statutory audit of public interest entities (the Regulation), and Directive 2014/56/EU covering the statutory audit of annual accounts and consolidated accounts (the Directive).

The Regulation and Directive taken together require revisions to both the Ethical and Auditing Standards as well as changes to the UK Corporate Governance Code. A consultation on these documents, as well as the Guidance on Audit Committees, was published on 29 September 2015.

As the FRC considers the Code is already consistent with the majority of the Regulation and Directive, only minimal changes were proposed to audit committee composition regarding sectoral competence and accounting/auditing experience and the more detailed references to audit retendering have been removed.

Suggested changes to the Guidance were more extensive, and included:

- amendments to ensure consistency and reduce duplication with the Code;
- an updated internal audit section to reflect recent reviews;
- increased transparency by audit committees of the FRC’s Audit Quality Review and Corporate Reporting Review teams’ work; and
- the reflection of insights gathered from FRC work.

The public consultation period closed on 11 December. We are assessing the responses and intend to release revised versions of the Code and Guidance in the second quarter of 2016. The requirements will come into effect on 17 June 2016 and apply to financial years starting on or after that date.

The Department for Business Innovation and Skills, the Financial Conduct Authority and the Prudential Regulatory Authority also undertook public consultations on their regulatory and legislative proposals over the same period and the FRC will continue to work with these organisations to ensure alignment of the regulatory framework.

Lord Davies Report on diversity[20]

In 2011 Lord Davies set a target for FTSE 100 companies to have 25 per cent of directorships held by women by 2015. In October 2015 it was announced that the figure had now reached 26.1 per cent, more than double the starting point of 12.5 percent in 2011. The figure is comprised of 31.4 percent of women in non-executive director positions and 9.6 per cent in executive roles. In 2011 there were 152 all-male boards in the FTSE 350, now there are only 15 companies left – all within the FTSE 250. The target has now been raised to 33 per cent female representation on the board by 2020 as well as being broadened to encompass the FTSE 250 companies.

[20] Data on gender diversity on the boards of FTSE 350 companies in this section is taken from Women on Boards Davies Review: Five Year Summary; October 2015. Data on smaller listed companies provided by Manifest.

It is widely recognised that it is the pipeline of female executive directors within companies that poses the real challenge and companies are being urged to consider more women for executive and top senior management positions as well as the chair and senior independent director board roles.

The increased gender diversity amongst non-executive directors has also been seen in FTSE 250 and Small Cap companies, where women now account for 24.8 and 17.3 per cent of non-executive roles respectively.

European Commission's Recommendation on the quality of corporate governance reporting (the 'comply or explain' principle)

The Recommendation, published in April 2014, was aimed at improving the overall quality of companies' corporate governance statements and, specifically, the quality of explanations provided when corporate governance code recommendations are not followed.[21] A number of proposals were suggested by the Commission about the information required in corporate governance statements. This included that the information is sufficiently clear, accurate and comprehensive thereby enabling shareholders, investors and other stakeholders to gain a good understanding of the manner in which the company is governed. Companies should also clearly state which code provisions they have departed from, report on why and how the decision was made and include any mitigating measures. Member States were required to make the Commission aware of their arrangements by June 2015 and the FRC responded on behalf of the UK.[22] This draws attention to our monitoring activities and the important role of investors. We concluded that the UK Corporate Governance Code meets the provision of the Commission's Recommendation.

Since then the European Confederation of Directors' Associations (ecoDa) in collaboration with Mazars has produced a pan-European report offering an overview of the approaches adopted at national level in terms of the implementation, monitoring and enforcement of Corporate Governance Codes. The report was intended to build upon the 2014 EU recommendation, by stimulating qualitative governance reporting. The report highlights best practice for objective and efficient monitoring and makes it clear that peer pressure and a credible monitoring regime are crucial for the survival of self-regulation. The FRC notes that there are many differences in the content of EU Member States' Codes and market circumstances, which is reflected in the different ways they are monitored across the EU.

Review of the OECD's Principles of Corporate Governance

The *OECD Principles of Corporate Governance* are a global public policy instrument intended to assist governments and regulators to evaluate and improve the legal, regulatory and institutional framework for corporate governance.

The OECD published for consultation a revised set of the Principles in November 2014. The final principles, the G20/OECD Principles of Corporate Governance, were endorsed at the G20 Leaders Summit in November 2015.

The main changes to the principles include new reporting by companies on non-financial information; a focus on investors acting in a fiduciary capacity; a role for board directors in risk management, tax planning and internal audit; the establishment of audit, risk and remuneration committees; and recommendations on further board training. It also discusses

[21] Commission Recommendation on the quality of corporate governance reporting ('comply or explain' principle); 2014/208/EU; April 2014

[22] A copy of the letter and press release can be found on the FRC website at: https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/July/UK-responds-to-European-Commission-s-Recommendatio.aspx

shareholder participation in decisions on executive remuneration; the use of new technology at shareholder meetings; and new procedures for the approval of related party transactions.

European Commission's Shareholder Rights Directive

Negotiations on the European Shareholder Rights Directive have continued through 2015. The Shareholder Rights Directive covers aspects of investor and company interaction, including voting on remuneration, engagement policies of institutional investors, the identification of shareholders, related party transactions and proxy voting advisors.

The Council agreed revised text in April 2015, which was then considered by the European Parliament. The Parliament process amended elements of the Council text, with the final agreed text including requirements for country-by-country reporting on turnover, tax on profit or loss and other items. This has proved contentious in the trilogue process, but discussions are unlikely to progress further until the publication of the European Commission's impact assessment on country-by-country tax reporting in spring 2016.

We will assist BIS with their negotiations as the dossier progresses. Our main focus will be on the retention of the 'comply or explain' elements of that part of the Directive which deals with transparency by institutional investors, which is important to achieve high quality disclosures.

European Securities and Markets Authority (ESMA) Call for Evidence

In June 2015 ESMA issued *Call for evidence – Impact of the Best Practice Principles for Providers of Shareholder Voting Research and Analysis*. The call for evidence received many responses from those throughout the voting chain, including company representatives, investors and proxy voting agencies. The FRC took part in an ESMA roundtable to discuss the call for evidence. ESMA's response to the call for evidence found that the industry is moving in the right direction but there is room for improvement, including around governance and monitoring. As discussed in the previous section, the FRC has worked with proxy advisors and others in the UK to support greater transparency and improve communication in the market.

Fiduciary Duties

In February the Department for Work and Pensions (DWP) released a consultation on proposed amendments to the Investment Regulations to clarify the difference between financial and non-financial factors in decision-making and the approach to stewardship. The DWP consultation was undertaken as a result of recommendations in the Law Commission's review of Fiduciary Duties of Investment Intermediaries. Specifically, the consultation asked whether the regulations should be amended to require trustees to state their policy on stewardship with reference to the Stewardship Code. DWP's feedback statement outlined that the Government would not move to amend the regulations to provide for a revised definition of non-financial factors or to refer to stewardship. The feedback statement did announce a consultation on the provision of information by trustees to members on topics including their approach to investment and stewardship and we look forward to engaging with DWP as they take this work forward.

In September the United Nations Principles for Responsible Investment (UNPRI) published a report – *Fiduciary duty in the 21st Century* – looking at fiduciary duty across eight global markets. The UK market analysis noted fiduciary duties should not be a hindrance to taking into account longer-term environmental, social and governance factors. It highlighted the recent work on fiduciary duty in the UK market, while noting that challenges remain. Recommendations were made to the government and the FRC. Our work on encouraging better stewardship report addresses the recommendation on differentiating more between approaches to implementation of the Code, and we will continue to consider the recommendations as we progress our work on stewardship.

ICGN Global Stewardship Code consultation

In late 2015 the ICGN launched a consultation on a Global Stewardship Code. This initiative supported the ICGN's existing policy framework and is intended to serve as point of reference for investors and jurisdictions interested in implementing stewardship codes. The ICGN's intention is that a Global Stewardship Code would complement – and not supersede – other stewardship codes.

Other Stewardship initiatives

In 2015 a number of UK pension funds, holding over £200 billion, published *A Guide to Responsible Investment Reporting in Public Equity*. The Guide outlines the areas in which the pension funds wish to see more information from their asset managers. It is intended to apply to individual mandates and help build understanding of the extent to which RI factors have been considered. Another initiative introduced by asset owners this year was the 'Red Lines' Voting campaign, officially launched by the Association of Member Nominated Trustees (AMNT) in December. The Red Lines are a set of 37 voting instructions covering circumstances to which the AMNT is opposed. Asset managers will be asked to comply with the rules or, where they have not done so, to explain their reasoning.

Capital Markets Union

The European Union's Capital Markets Union (CMU) is a long-term initiative to remove barriers to cross-border investment, particularly to allow entrepreneurs and small to medium enterprises greater access to investment.

The Commission publicly consulted on the CMU from February to May. The FRC responded on a number of questions, including on common EU level accounting standard for small and medium-sized companies, corporate governance, and the role of European Supervisory Authorities and the development of new technology markets.

The CMU 'Action Plan' was published on 30 September 2015. It has four areas of focus:

- Enhancing the flow of capital from investors to companies and projects, notably start-ups, SMEs and long-term projects.
- Ensuring the financial infrastructure and intermediaries are able to channel investment across borders efficiently and on the same terms as nationally.
- Improving risk transfer and allocation of capital across the EU to those better able to bear it by amongst other things developing securitisation.
- Diversifying sources of funding by expanding risk finance, in part by making Europe less dependent on bank finance.

Accompanying the plan were a number of legislative proposals and calls for evidence. This includes a call for evidence on current EU financial services regulation, closing in January 2016. In November the Commission released proposed amendments to the prospectus directive, including exempting the smallest capital raisings, shorter prospectuses and better investor information and simplified secondary issuances. The FRC looks forward to assisting the Commission in progressing these workstreams.

Corporate Governance and Stewardship Work for 2016/17

The work of the FRC in the areas of governance and stewardship overlaps with that of many others, and we continue to work closely with market participants, representative organisations, service providers, regulators and Government departments.

During 2016, our overall objectives will be to continue to promote corporate governance and corporate cultures that support the long-term success of companies. We will also encourage effective investor stewardship and engagement between companies and investors.

Main Activities

- Analyse the responses to the Succession Planning Discussion Document and consider whether any further action is necessary
- Continue to monitor adoption of 2014 UK Corporate Governance Code provisions
- Complete our market-led review about how boards can most effectively establish company culture and practices that embed good corporate behaviour
- Introduce the limited changes to the UK Corporate Governance Code linked to the implementation of the EU Audit Regulation and Directive (ARD) in 2016, but otherwise avoid revising the UK Corporate Governance Code over the three year strategy period
- Promote effective investor stewardship by evaluating Stewardship Code signatories' statements and making public our assessment, promoting stewardship and engagement activities and initiating implementation of the Shareholder Rights Directive

The FRC's 'Draft Plan & Budget and Levy Proposals 2016/17' is currently out for consultation. We welcome comments on all aspects of our plans and funding proposals for 2016/17 and ask for comments by 12 February 2016. We plan to publish our finalised Plan & Budget 2016/17 in March 2016.

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