

**From:** Boatman Timothy [Timothy.Boatman@telekomunikacja.pl]  
**Sent:** 02 October 2009 20:24  
**To:** Chris Hodge  
**Subject:** Review of the effectiveness of Combined Code-Progreess Report and Second Consultation

Attention Chris Hodge

Dear Sirs,

I have reviewed the the above which clearly and correctly takes maximum advantage of the Walker report of 16 July 2009. Whilst mainly focussing on the financial services sector it raises many issues relevant to Corporate Governance more widely, in particular the need for the increased professionalism of NEDs and the facility/willingness to stand up to dominant executive.

In my initial response to you of 28 May 2009 I concentrated mainly on the topic of audit committees and the required expertise which, I trust, will be dealt with by the FRC in its final report.

In the meantime I set out below my comments on the second consultation-

-page 9-As a general observation I consider that you put too much weight on your concerns regarding the required time commitment of NEDs thereby reducing the available pool. If an NED is to fulfil his/her responsibilities effectively he/she must be encouraged/want to "walk the floors/kick the tyres"-not just act like "the electrician". Walker is correct to suggest a minimum expected time commitment of 30/36 days-this should be applied more generally. For those companies with US listings the time required will be that much greater.

Chairmen of the main board committees-Audit, Risk, Remuneration-will need to devote additional time to that suggested if they are to meet professional and public expectations. The Code should be specific on this matter.

-page 15-I find the implications of Walker recommendation 1 particularly worrying. If it is considered that NEDs need regular business awareness sessions at induction and thereafter, it would seem logical to conclude that they were not "fit for purpose" in the first place-regular Powerpoint presentations will not compensate for this. Simply put it is not an acceptable proposition that NEDs will "learn on the job".

-page 17-Whilst being in favour of a regular board evaluation process this should be a role for the SID and not "external facilitators".

-page 19/20-The board's clear responsibility for strategic risks and setting risk appetite should be made more explicit in the Code. In addition the current "Turnbull Guidance" could, with advantage, be reviewed/updated in the light of recent market turmoil/lessons to be learned. It would also be helpful if guidance on good communication tools was to be developed.

-page 29-As recommended in my submission of 28 May 2009 I am convinced that there is a clear need for far closer monitoring by FRC/FSA of the "comply or explain" statements, together with the application of appropriate warnings/sanctions if the explanations given for non compliance are deemed to be inadequate. It is not realistic to assume that "investor pressure" will provide the necessary control.

All of the above said it has to be recognised that the current review of the Code is based on the existing concept of the unitary board. One is bound to question whether or not this continues to be a realistic and practicable proposition. Walker(2.2 iv) raises a particularly apposite point which leads one on to question "What are the reasonable expectations of NEDs-value creation or value preservation?". This needs to be resolved otherwise NEDs will continue to face public ridicule/reputational damage when things go wrong.

With the changes to the Code being currently considered it is inevitable that NEDs will be more and more drawn into the executive decision making process(eg Walker proposals for dedicated Risk Committees). Is this really what is intended rather than NEDs providing independent oversight?

I believe that these issues need further, and deeper, review by the FRC/FSA with particular reference to the Supervisory Board/Management Board concept. Walker(2.14) concludes against such a split- nevertheless I recommend that further consideration should be given to the advantages/disadvantages of such an arrangement.

Yours faithfully,  
T.G. Boatman

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