

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

Capita Company Secretarial Services Response to FRC Progress Report and Second Review of the Combined Code (the "Code")

9th October 2009

Dear Chris

We are grateful for the FRC's progress report and summary of feedback and we appreciate the opportunity to supplement our initial response submitted on 29 May 2009. We continue to support our initial views and do not wish to repeat these, thus, we have focussed on several of the 'items for consideration' arising from the progress report, in particular:

- Quality of corporate governance;
- 'Comply or explain';
- Risk management;
- Board evaluation;
- The role of the Company Secretary;
- Independence; and
- Transparency.

We understand that corporate governance within the financial industry is currently under intense examination, and for good reason. However, it is our hope that any amendment to the Code will take into account the needs of the large variety of companies that apply it, and we would caution against too close a link between the Walker review and the Code. We have therefore responded to this in the context of the FRC review only and we have not responded to the Walker related aspects of the progress report.

Please note that, as with all of our consultation responses, these are the views of Capita Co-Sec and are neither representative of Capita Group Plc nor our clients; we do not as a rule consult with these for such a response.

Quality of corporate governance

We are very pleased that the summary of feedback recognises that the quality of corporate governance ultimately depends on people and behaviour, rather than

process. We strongly agree that there is a need to include in the Code methods or suggestions as to how the issues relating to people might be tackled (e.g. behaviours expected of Chairmen, Senior Independent Directors, Non-Executive Directors and Company Secretaries).

To achieve this, we would suggest a reworked and revised update of the Higgs concepts and guidance, taking into account the corporate governance needs of organisations in the current environment, and potentially incorporating key aspects within the Code.

Comply or explain

We continue to support our initial comments regarding 'comply or explain' and we take the view that, if applied correctly, this approach provides sufficient flexibility for a company to act in the best interest of both itself and its shareholders. However, we wish to reiterate our initial comment, and the views of a number of other commentators, that the term 'comply or explain' should be replaced with 'apply or explain'. Whilst we understand the FRC's concerns, we feel that this approach would require more proactive rather than prescriptive action from investors and companies alike and would discourage companies from trying to meet investor expectations by simply ticking all of the right boxes.

We feel that it is important that investors accept that there are many different ways to achieve fulfilment of good governance and that a 'code' innately implies that individual interpretation by each company is required rather than a 'one size fits all' approach.

Risk management

We do not believe that most of the risk management failures leading to the market crisis were due to failures of the Code. However we do feel that there is a need for greater emphasis on the embedding of risk management as part of the natural expectation within an organisation and its investors, so that this is not seen as just another box to tick.

This needs to be brought about by changes in behaviour, in particular the maintenance of a dialogue between companies and institutional investors, rather than changes to the Code.

In order to achieve this, companies must provide institutional investors with sufficient information required to understand and ascertain risks associated with the business and, in turn, these must actively challenge the Board on these areas. We also agree with those commentators that said there is a greater need for organisations to consider low probability, high impact risks, which were perhaps not emphasised in the past. Risk management should be forward looking and embedded in every-day decision making processes and past, present and future risks need to be properly identified. We would encourage the FRC to consider what might be the most effective way to achieve this.

Board evaluation

It is our opinion that the need for increased Board evaluation is greater than ever. However we feel that the annual expectation for evaluation should be replaced with a timetabled and structured approach, more frequently considering external factors and

future concerns. We continue to support our suggestion that external board evaluation should be biannual and compulsory, as this would ensure a more focused challenge to directors whilst retaining flexibility under the 'apply or explain' regime.

The role of the Company Secretary

As we explained in our May 2009 response, we believe that the Company Secretary is uniquely placed to act as an overseer of the conduct of the board, the business of it and its committees. This crucial role provides governance structure, advice and administration, whilst acting as the 'conscience' of the Board and of the organisation. Therefore we feel that the role of the Company Secretary should be strengthened, and perhaps, where appropriate, fulfil the role of Senior Independent Executive :

- independent as the Secretary should be able to always be objective
- executive because the Secretary is a full-time paid employee of the organisation.

Independence

We feel that there is a need for further consideration of the concept of 'independence'. What does it really mean and how can we evidence it? We would encourage the FRC to review the ways in which independence is determined, as more flexibility is needed in order to achieve a balance between the required independence and the need for industry experience.

In particular, we would recommend removing the nine year threshold currently placed on non-executive directors as we feel that this sacrifices experienced, valuable non-executive directors for the sake of the appearance of 'independence'. We believe that it should be the function of the board to consider whether a non-executive director remains independent in each individual circumstance.

Transparency

Similarly, there is a need for further consideration of the concept of "transparency", what this means, and how can it be evidenced. As we stated in our earlier response, we believe that there should be a formal link between the Code and the Disclosure and Transparency Rules in order to eliminate some of the confusion where these overlap.

Conclusion

We would like to thank the FRC for this second opportunity to express our views on the effectiveness of the Combined Code. We would be happy to discuss any of the above in further detail.

Yours sincerely



Mark Wearden
Interim Managing Director
Capita Company Secretarial Services

