

David Styles  
Director, Corporate Governance and Stewardship  
Financial Reporting Council  
8th Floor  
125 London Wall  
London  
EC2Y 5AS

Submitted via email to: [codereview@frc.org.uk](mailto:codereview@frc.org.uk)

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## RE: Corporate Governance Code Consultation

Dear Mr. Styles,

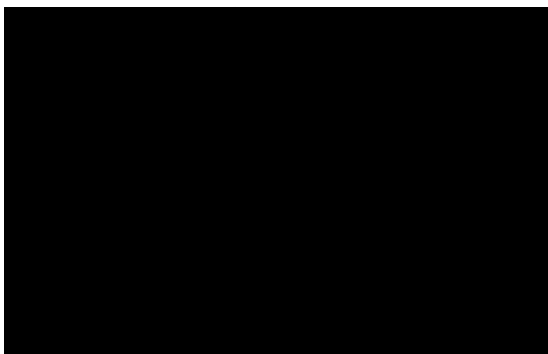
Robeco is pleased to have the opportunity to provide feedback on the draft revised UK Corporate Governance Code (hereinafter: "the Code").

By way of background, Robeco is a pure-play international asset manager. Founded in 1929, our headquarters are in Rotterdam, the Netherlands, and we have 15 other offices worldwide. A global leader in sustainable investing since 1995, our use of sustainability research coupled with fundamental and quantitative analysis enables us to offer institutional and private investors an extensive selection of active investment strategies covering a broad range of asset classes. Robeco is wholly owned by ORIX Corporation Europe N.V., a subsidiary of ORIX Corporation, a Japanese multinational enterprise.

We welcome the proposed amendments to the Code, which we hope will lead to the further improvement of corporate governance policies and practices in the UK. We are pleased to note the Financial Reporting Council's focus on issues which are of utmost importance in our stewardship activities, such as diversity, equity and inclusion, risk management and internal control, and remuneration.

In what follows, we share our responses to the specific consultation questions. We would be delighted to follow up on any of the points raised. For any questions, please reach out to our 

With kind regards on behalf of Robeco,



## SPECIFIC RESPONSES TO CONSULTATION QUESTIONS

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### **Q1: Do you agree that the changes to Principle D in Section 1 of the Code will deliver more outcomes-based reporting?**

We support the proposed changes and agree that these would deliver more outcomes-based reporting, which would allow the reader to better assess the quality of a company's corporate governance.

We would view it as beneficial to add a recommendation that companies explain how outcomes relate to their purpose, strategy and values, as recommended in the FRC's November 2022 Review of Corporate Governance Reporting. We believe that this addition would help deliver more meaningful reporting, mitigating the risk that reports include boilerplate statements.

### **Q2: Do you think the board should report on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance?**

The management of climate-related risks and opportunities is essential for all companies as we transition to a net zero economy. In addition, appropriate climate-related reporting is key for investors, as it enables them to more accurately price climate-related risks. As such, we believe it is crucial that the board reports on the company's climate ambitions and transition planning, in the context of its strategy, as well as the surrounding governance.

We therefore welcome the amendments to Provision 1, as these represent a good complement to the mandatory climate-related financial disclosure regulations applicable under UK Company Law and FCA Listing Rules.

### **Q3: Do you have any comments on the other changes proposed to Section 1?**

With regards to Section 1, Provision 6, we recommend adding that the board should not only routinely review the effectiveness of the arrangements and the reports arising from their operation, but should also promptly address any issues identified.

### **Q4: Do you agree with the proposed change to Code Principle K (in Section 3 of the Code), which makes the issue of significant external commitments an explicit part of board performance reviews?**

We support the proposed change. The scope and complexity of the matters that board members are expected to oversee has increased significantly over time. Moreover, the benefits of serving on multiple boards (e.g. broadened expertise and an enhanced network of contacts) can be diminished by excessive time commitments, to the extent that overboarded directors may become unable to adequately discharge their fiduciary duties. For this reason, it is crucial for the board to have adequate policies and practices in place to evaluate whether directors have sufficient time to dedicate to their duties.

### **Q5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?**

We support the proposed change and believe that greater transparency on directors' commitments strengthens director accountability and enhances investor trust.

**Q6: Do you consider that the proposals outlined effectively strengthen and support existing regulations in this area, without introducing duplication?**

Lack of quality disclosure remains one of the main challenges investors face when assessing companies' efforts on diversity and inclusion. Where disclosure is present, it is often limited and fails to provide sufficient insight into the company's diversity policy, the underlying objectives and targets and the progress in achieving these.

We believe that the proposals outlined are a good complement to existing mandatory requirements and voluntary initiatives concerning diversity and inclusion and do not introduce duplication, encouraging companies to steer away from boilerplate statements and to enhance the quality of their approach to and disclosures on diversity and inclusion.

**Q7: Do you support the changes to Principle I moving away from a list of diversity characteristics to the proposed approach which aims to capture wider characteristics of diversity?**

We support the proposed changes as they promote enhanced disclosure on diversity and inclusion, while also encouraging companies to consider diversity beyond gender and to shift their workplace culture in a meaningful way.

**Q8: Do you support the changes to Provision 24 and do they offer a transparent approach to reporting on succession planning and senior appointments?**

We welcome the amendments to Provision 24 and believe they offer a transparent approach to reporting on succession planning and senior appointments, which enables investors to better assess the work of the nomination committee and the overall quality of the company's corporate governance.

**Q9: Do you support the proposed adoption of the CGI recommendations as set out above, and are there particular areas you would like to see covered in guidance in addition to those set out by CGI?**

We support the proposed adoption and there are no particular areas we would like to be covered in addition to those that are already set out.

**Q10: Do you agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis?**

We agree that all Code companies should prepare an Audit and Assurance Policy, on a 'comply or explain' basis, as this would lead to comparable reporting and ultimately to more transparency and accountability.

Risk, control and compliance are often difficult to assess as an outsider. Additional information on practices around risk control and assurance is therefore welcome as long as it is sufficiently concrete. The guidelines focus on policy and responsibilities, the risk is that this leads to high level descriptions that add to seemingly strong processes, but don't tell investors much about the quality of assurance. We therefore believe that the policy should be informative, so it should not only invite companies to describe principles and responsibilities, but also criteria that were tested by the audit committee, and the results of such review.

**Q11: Do you agree that amending Provisions 25 and 26 and referring Code companies to the Minimum Standard for Audit Committees is an effective way of removing duplication?**

Yes, we agree that the amendments are an effective way of removing duplication. We welcome the introduction of the Minimum Standard for Audit Committees and the proposal that this standard applies (on a “comply or explain” basis) to all companies reporting under the Code rather than only to FTSE 350 companies.

**Q12: Do you agree that the remit of audit committees should be expanded to include narrative reporting, including sustainability reporting, and where appropriate ESG metrics, where such matters are not reserved for the board?**

Yes, we agree. It should also be clear with which levels of assurance sustainability sections were reviewed, with any differences in the levels of assurance clearly indicated.

However, including narrative reporting under the remit of the audit committee only tackles part of the problem. The reason why ESG-related reporting often fails to undergo a rigid audit is the lack of standardized definitions or reporting standards. The regulator’s focus should lie with making progress on the harmonization of reporting frameworks on ESG. Another issue is that reporting on ESG issues is often about ambitions and processes and less about ESG performance. Reporting requirements should be much more focused on measurable ESG performance. Those will also be easier to verify.

**Q13: Do you agree that the proposed amendments to the Code strike the right balance in terms of strengthening risk management and internal controls systems in a proportionate way?**

Yes, there should be a balance and we believe that the relevant parts are covered.

There is a difference in the roles of external audit, internal audit and risk management. External audit generally bases their work and statements on methodologies and testing, but is less familiar with the business context and priorities than internal audit and risk management. The board needs to carefully review the balance of assessment by internal resources and external audit. If external auditors are asked to assess risk and control frameworks, it should clearly report which priorities and criteria they were provided for such an assessment. Increased understanding and accountability can be created if the audit committee reports on which assessments come from management and external auditors.

That said, we believe that the reporting guidelines may lead to boilerplate reporting and it would therefore be appropriate to review the reporting quality after the first couple of years.

**Q14: Should the board’s declaration be based on continuous monitoring throughout the reporting period up to the date of the annual report, or should it be based on the date of the balance sheet?**

We believe that the declaration should be based on continuous monitoring throughout the reporting period up to the date of the annual report, in line with the new wording proposed for Provision 30 of the Code:

*The board should provide in the annual report:*

- *A declaration of whether the board can reasonably conclude that the company's risk management and internal control systems have been effective throughout the reporting period and up to the date of the annual report;*
- *An explanation of the basis for its declaration, including how it has monitored and reviewed the effectiveness of these systems; and*
- *A description of any material weaknesses or failures identified and the remedial action being taken, and over what timeframe.*

**Q15: Where controls are referenced in the Code, should 'financial' be changed to 'reporting' to capture controls on narrative as well as financial reporting, or should reporting be limited to controls over financial reporting?**

It seems that several of the changes are aimed at two main purposes - 1) to enhance the credibility of the companies' reporting, and 2) to restore trust through enhanced control and risk management. To achieve this, we believe that guidelines around non-financial reporting should also be enhanced, therefore it makes sense to mention controls that cover "reporting" instead of solely "financial reporting".

**Q16: To what extent should the guidance set out examples of methodologies or frameworks for the review of the effectiveness of risk management and internal controls systems?**

Examples are helpful if they are provided to explain which disclosures are considered to meet the spirit of the Code and which are considered to be vague or limited. It should be emphasized that such examples should not be used as blueprints to copy reporting. Frameworks that provide guidance on meaningful reporting are welcome and it should be monitored if they lead to the desired reporting.

**Q17: Do you have any proposals regarding the definitional issues, e.g. what constitutes an effective risk management and internal controls system or a material weakness?**

Effective risk management is key for any organization, yet for outsiders it is difficult to get a grasp of how organizations deal with it. Even though many organizations will report on risk appetite statements, governance and procedures, it remains hard to get a good grasp of how well a company actually manages risk. It is about having sound governance in place, but it goes far beyond that and depends on whether processes are followed, whether new risks are picked up quickly, as well as on the organization's culture towards risk.

If additional risk reporting would come into play, it would be interesting to sense how the audit committee has assessed the quality of risk management and controls, as well as the interplay of the aspects mentioned above, including what aspects were tested and what information was relevant and led to that conclusion.

**Q18: Are there any other areas in relation to risk management and internal controls which you would like to see covered in guidance?**

Please refer to the above.

**Q19: Do you agree that current Provision 30, which requires companies to state whether they are adopting a going concern basis of accounting, should be retained to keep this reporting together with reporting on prospects in the next Provision, and to achieve consistency across the Code for all companies (not just PIEs)?**

We agree that current Provision 30 should be retained.

**Q20: Do you agree that all Code companies should continue to report on their future prospects?**

Yes, in most cases companies will be in going concern and most investors will be aware of the key risks at hand, but such a statement can provide investors with relevant narrative on management's outlook and issues for the near term.

**Q21: Do you agree that the proposed revisions to the Code provide sufficient flexibility for non-PIE Code companies to report on their future prospects?**

Yes, our direct interest in reporting is mostly in any security issuing entities. Ideally, non-PIE code companies follow the same guidelines for relevant governance and reporting where possible, but given a difference in nature for some such organizations, we believe that sufficient flexibility is provided.

**Q22: Do the proposed revisions strengthen the links between remuneration policy and corporate performance?**

Yes, the phrasing is more focused on performance. More importantly, performance criteria should be disclosed in the policy and clear performance reporting should be available in remuneration reporting. In case the remuneration committee found that it had to exercise discretion, this should be reported in the remuneration report.

**Q23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?**

Yes, even though clawback and malus provisions are hardly ever used, the requirement to disclose them and explain to shareholders under which circumstances they could be used at least provides confirmation that guidelines are in place.

**Q24: Do you agree with the proposed changes to Provisions 40 and 41?**

It appears that the requirements are less specific. The positive change is that the amended guidelines probably invite more reporting on process, the downside is that companies could easily report high-level outcomes that are not meaningful for investors.

**Q25: Should the reference to pay gaps and pay ratios be removed, or strengthened?**

We believe that the reference should not be removed. Disclosure on pay gaps and pay ratios is still relevant to report, not only to facilitate comparability but also to allow for an assessment of how companies' pay practices evolve over time. Importantly, these ratios are context-dependent and companies should also provide an insight into whether they aim to keep ratios in their organizational pay structure stable or if they want to address certain gaps.

**Q26: Are there any areas of the Code which you consider require amendment or additional guidance, in support of the Government's White Paper on artificial intelligence?**

In order to mitigate risks related to AI adoption and maximize its potential benefits, it is crucial for companies to develop strong governance on AI. We therefore believe that including additional guidance on this topic in the Code is needed.

Companies are expected to maintain control processes that identify incidents, potential risks, and other unintended consequences. Risk reporting should be available in the company's formal documentation and reviewed by auditors. Additionally, the board should be sufficiently trained and experienced to exercise meaningful oversight on the control framework of AI and sign off on AI policies and risk reporting.

However, the majority of companies still lack evidence of effective and robust AI governance frameworks to ensure ethical and trustworthy AI. These companies have limited disclosures around board oversight efforts, making it challenging to understand how societal impacts linked to AI are being identified and mitigated. In addition, disclosures about how policies are implemented and translated into practice for AI-related products and services are also limited.