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By Email: codereview@frc.org.uk

To whom it may concern

UK Corporate Governance Code - Consultation Document

Thank you for the opportunity to respond to the consultation on the UK Corporate Governance Code.

We have reviewed the consultation document and appendices and considered the questions posed. We have included responses to questions where we feel further consideration of the proposed approach is needed.

We recognise the need to enhance the transparency of how reporting responsibilities are discharged by boards and audit committees, and we welcome initiatives around the Resilience Statement and the Audit and Assurance Policy. We also believe that the reporting on the board's oversight of the effectiveness of risk management and internal control systems needs to be more standardised to facilitate informed decision-making by all stakeholders.

Extra resource will be required to effect the changes resulting from the expansion of reporting requirements and comply with them on an annual basis. This comes at a time when the competitiveness of the UK listed market is under pressure from alternative international locations, and we believe a robust cost/benefit analysis of the changes is required. Companies must have confidence that the required investment, at a time when they are under significant pressure from macro factors, will deliver net benefit to their stakeholders.

You will see from our detailed response, we do not support some of the proposed changes, in particular those relating to the reporting of the effectiveness of risk management and internal control systems. In our view, the proposals to include all internal controls within the scope of the declaration, and their effectiveness throughout the year will impose a significant new burden on companies and creates a much higher bar in the UK than any other major international market.

Should you have any questions in relation to this submission, please contact:
[redacted]

Yours faithfully,
[redacted]

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Consultation Question	Response
Question 2: 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?	**We agree that the Board should report on the company's climate ambitions and transition planning in the context of its strategy.** However, we have concerns about the removal of the provision requiring companies to explain how governance arrangements contribute to the delivery of strategy. If the narrative expected in compliance with the new Provision 1 is intended to be included in the Governance section of Annual Reports, this is likely to lead to duplication given the broad requirements of this provision alongside Strategic Report requirements. Even if duplication is minimised, it is likely to lead to more cross referencing, interrupting the flow of narrative and resulting in a report that is difficult to read.
Question 3: Do you have any comments on the other changes proposed to Section 1?	**Yes, we do.** Reporting on how effectively the desired culture has been embedded will require agreement of an appropriate data set to track performance. The Company monitors a number of metrics and will need to consider which of these statistics would be the right starting point to measure how effectively culture has been embedded. If there is a desire for some uniformity of approach by corporates, some high level guidance would be welcomed in this regard. Provision 3 has amended the requirement for Committee Chairs from "seeking engagement with shareholders" to a requirement to "engage with shareholders on significant matters". Harbour notes that compliance with this requirement is dependent on investor appetite and given our directors' experience of never having engagement on AC matters over many years, despite requesting it, **we strongly recommend leaving the wording as it is today.**
Question 5: Do you agree with the proposed change to Code Provision 15, which is designed to encourage greater transparency on directors' commitments to other organisations?	**No, we do not agree.** The proposed change to Provision 15 of the Code, for companies to describe how each director has sufficient time to undertake their roles effectively in light of commitments to other organisations, is highly likely to lead to increased use of boilerplate language. Also if a director has only one external appointment, the disclosure requirement seems disproportionate. It may be more effective to incorporate this requirement into Provision 22, in the disclosure surrounding annual review of board/committee performance. Assessment of how individual directors have performed throughout the year, in the context of the directors' external appointments, forms part of the annual board performance review.

	The annual board performance review could also incorporate a forward-looking lens, ensuring that the potential extent of the demands of a director's portfolio appear appropriate in the context of the strategic direction and likely demands of the Company over the next twelve months. We consider that this would be more likely to result in meaningful and proportionate disclosure.
Question 7: 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 do support the changes but welcome a review of the drafting as it currently stands.** The intention behind the inclusion of cognitive and personal strengths added to the characteristics listed in this Principle is unclear. Are cognitive and personal strengths a reference to neurodiversity, or difference of thought, i.e. the benefits brought by protected/non-protected characteristics, or simply a different perspective? If the former, we consider "aiming to capture all protected and non-protected characteristics" adequately covers cognitive and personal strengths. Supporting guidance on best practice succession planning for companies and Nomination Committees (including DEI) would be welcomed.
Question 9: 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 of the CGI recommendations.** It may also be helpful for the Nomination Committee to describe how it has overseen the development of a diverse pipeline for succession in broader terms - for example, appointing an executive to their first non-executive role, or ensuring that coaching is provided to senior individuals within the organisation, enabling them to take on external positions. These activities further enable the diversity of appointments across all listed companies to support the global talent pool.
Question 11: 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 this is an effective way of removing duplication.** However we disagree with some of the wording in Provision 26. If Audit Committees are to be tasked with "promoting effective competition during the tendering for an external auditor, to support market diversity" this cannot be at the expense of audit quality. Therefore, we strongly suggest adding in words to that effect.

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Question 12: 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?	**No, we do not agree**. We believe it is for the Board to determine how to delegate any responsibilities across its Committees. Harbour has a Health, Safety, Environment and Security ('HSES') Committee which provides assurance to the Audit and Risk Committee ('ARC') in relation to sustainability and ESG reporting and metrics. The HSES Committee monitors activity and data throughout the year and as such, is the most appropriate forum to consider sustainability reporting and ESG metrics. There is a deliberate membership crossover, with two ARC members being members of the HSES Committee, to ensure there is comprehensive challenge and insight across committees. The ARC should be able to rely on assurance from the HSES Committee rather than duplicating this work.
Question 13: 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?	**We do not support the proposed amendments in relation to this declaration.** While at a conceptual level many of the proposed amendments seem reasonable and build on existing requirements, we are very concerned that the time and cost involved in implementing the changes in practice will outweigh any benefits to our stakeholders of the proposed changes. We are concerned that the broad and extensive nature of a declaration that includes, for example, effectiveness throughout the year (rather than point in time) and of all controls (rather than just those relating to financial reporting) could require considerable time and resources to implement. We do support the retention of the "comply or explain" regime, which we believe could be helpful during the implementation phase, but we are concerned that certain stakeholders, in particular the proxy agencies, will not take this into account in their assessments and this could have adverse consequences for some companies. Further, we are concerned that for Boards to make such a declaration, they will choose or need to seek additional wide ranging external assurance over the risk management and internal control systems and the declaration statements and assurance providers will struggle to meet this demand. Overall, in the absence of detailed supporting guidance, we are concerned the amendments could, in effect, require a SOx level of assessment of the entire control framework. We are also concerned about the future potential for litigation including class actions on a range of data and statements for which no existing standards or methodology exist.

	We suggest that the amendments put more emphasis on the Board to explain the steps undertaken to assess the effectiveness of the risk management and internal control systems, stagger the implementation of the changes, and focus the declaration on the effectiveness of internal controls over financial reporting in the first instance. We address the specific consultation questions related to these changes below.
Question 14: 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 the Board's declaration should be based on the date of the balance sheet.** The logistics of running the declaration up to the date of the annual report would be challenging. The existing 'post balance sheet events' checks should be sufficient to cover the period from balance sheet date to annual report date. In addition, we are concerned that the notion of 'continuous' monitoring would be unrealistic and even unattainable across the breadth of the controls areas currently proposed for declaration. We would suggest the term 'regular monitoring' may be more appropriate as a basis for the declaration.
Question 15: 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?	**We believe reporting should be limited to controls over financial reporting**, as summarised in our response to Q13.
Question 16: To what extent should the guidance set out examples of methodologies or frameworks	We recommend that the guidance should help the Board align their methodology or framework to the nature of their business.

for the review of the effectiveness of risk management and internal controls systems?	Therefore, we suggest that the guidance should be designed to provide practical assistance on implementation and, critically, should avoid too much prescription. It would be helpful to include some pragmatic examples for illustrative purposes and perhaps set out 'minimum expectations'. Such guidance would also help build common understanding between Management (who are operationalising these systems in the business) and the Board (who are required to comment on their effectiveness) and so help the Board implement the requirements in an effective manner.
Question 17: 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?	The guidance should help the Board to decide the scope of the material controls that will form the basis of its declaration, to consider what is an effective system, and to inform its reporting of material weaknesses and failures. The definitional framework should be risk-based and take account of the Board's appetite or tolerance for risk in that area. It should consider that an effective system is one that highlights control weaknesses rather than one that evidences preventative controls in all instances. The framework should also help the Board consider how those material weaknesses or failures that are identified and sufficiently remediated within the reporting period are to be handled. The Board should then disclose its key definitions in the annual report narrative to allow the reader to understand how the Board has interpreted the provision and the materiality thresholds it has applied.
Question 23: Do you agree that the proposed reporting changes around malus and clawback will result in an improvement in transparency?	We agree with the principle of increased transparency. However, we strongly believe that the Remuneration Committee must retain its discretion when implementing malus and clawback provisions. **We do not agree with the publication of minimum circumstances in which malus and clawback provisions could be used or minimum periods for malus and clawback. As such, we do not support the inclusion of the first or second bullet points in the new Provision 40.** We support the requirement to disclose where provisions have been used in the last reporting period and an explanation of the reasons for use, as well as setting out the use of malus and clawback provisions over the previous five years.
Question 25:	

Should the reference to pay gaps and pay ratios be removed, or strengthened?	Within Harbour, the Remuneration Committee oversees workforce remuneration, which includes review and approval of the gender pay gap report as well as reviewing data on pay gaps and pay ratios across the organisation. This includes an assessment of the way that the Remuneration Policy addresses any gaps. **As such we believe that the reference to pay ratios and pay gaps should be strengthened rather than removed.** In addition, guidance would be welcomed on whether the Remuneration Committee should also consider the impact of the Remuneration Policy on pay gaps and pay ratios.