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Dear David Styles: Director, Corporate Governance and Stewardship, Financial Reporting Council

Informa PLC response to the "UK Corporate Governance Code Consultation"

We are fully supportive of all initiatives that enable companies to create sustainable value in stable capital markets, underpinned by effective corporate governance. It is important that the FRC and other regulators, help maintain the UK's position as a leading global destination for investment. In that light, our recommendation is that there continues to be a focus on targeted proposals that improve the competitiveness of the UK as a destination for foreign investment.

We believe the underlying causes of recent UK corporate failures to be an inadequate adoption of the existing Corporate Code framework, not a weakness in the framework itself. The principal disadvantage of stronger regulation of risk management and internal controls is an increase in costs for companies, the quantum of which will be dependent on the scope of controls considered and assurance requirements. On that basis, we are concerned that the consultation included the requirement for a board declaration over the effectiveness of risk management and control activities throughout the year. The wide-ranging scope could significantly increase costs borne by companies and investors, and increase external audit costs. In our view, the wide scope, the requirement for continuous monitoring of control effectiveness and limited prescriptive guidance on the depth of assurance required to support the declaration will negatively impact the attractiveness of the UK as a headquarters location for global companies.

We strongly advise the FRC to finally conclude on what the new requirements/ guidance will be, rather than for companies and their external auditors to second guess on what has been a continuous loop of consultations on corporate governance reforms over the last few years.

Letting companies and their auditors collectively interpret and define requirements was one of the biggest issues in the early years of the US Sarbanes Oxley Act and led to excessive volume of control documentation and assurance activities, taking up a disproportionate amount of management focus, with little real value for shareholders. Without clear, concise guidance through UK Legislation, the FRC and other regulatory bodies could unwittingly create a similar scenario for UK corporates i.e., not focussing sufficient effort on adequately managing risks over financial reporting and doing too much assurance work in other lower risk areas of the Annual Report. A clear statement from the FRC on the expected level of effort required would help adoption of the revised Corporate Code.

We are less than 18 months away from the potential go live start date of 1 January 2025 and the detailed guidance and requirements are still nebulous. We have invested and will continue to invest in our risk and control framework to be ready for that date; however, we do not want to invest and find there is a further delay of a year in the implementation date or further significant changes in the requirements. We need greater clarity on the final requirements and timelines.

We acknowledge, greater objectivity and consistency on environmental, social and governance disclosures is required across all global markets. However, we recommend the FRC stops the practise of badging the three elements under the single label of ESG, and considers the three elements independently. We believe that labelling the three areas under one term is misleading.

Finally, we agree it is beneficial for all large UK listed corporates to confirm adoption to a prescribed risk management and control framework (such as COSO 2013). This will provide confidence to investors and other stakeholders, as a public interest company's reported financial performance would be underpinned by clearly defined corporate governance principles.

We agree any additional assurance (if any) provided over a company's risk and control framework, its annual report and financial statements, should be explained in an easy-to-understand Audit and Assurance Policy.

Yours Sincerely

[redacted]

We lay out our detailed responses to specific questions within the consultation in the Appendix.

Appendix

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

It is unclear from the consultation the consequences for a company and its board, if it decides not to provide a board declaration, as many companies and their shareholders may argue that the cost and management time required to obtain the assurance to support the board declaration outweighs the benefits of providing the additional assurance to the wider investor and stakeholder community. It would be helpful to understand if the Auditing, Reporting and Governance Authority (ARGA) which will replace the FRC, will mandate an annual board declaration on control effectiveness in the future for public interest entities.

As an illustration, if a company had the appetite to enhance its corporate governance structures and risk, and internal control environment and report on its effectiveness, it may conclude it would be better served to be US listed (and comply with US SOX), as currently US listed company valuations carry a significant premium when compared to a UK only listed company.
Any additional assurance investors are seeking over and above the financial results and Annual Report, could slow down the process to publish the financial results and Annual Report, meaning the information provided is less timely and therefore less value adding for investors, when published.

In conclusion, if a company chooses to “comply” the result will be improved outcome-based reporting over corporate governance effectiveness. If a company chooses to not make a board declaration and explains why without subsequent consequences, then clearly that does not facilitate outcome-based reporting of the effectiveness of its corporate governance processes.

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

We understand that under the recent Companies Act statutory instrument, an Audit and Assurance Policy will be mandatory for listed public interest companies, so an amendment to the Corporate Code for the AAP to be “comply and explain” does not impact us directly if that legislation is passed this year.

We support the principle of issuing an easily understood Audit and Assurance Policy. Investors would expect that a company’s financial statement~~s~~ are free from material misstatement and key non-financial reporting disclosures are reliable. Investors will find it beneficial to understand the level of assurance provided (if any) over what they consider key non-financial disclosures in the Annual Report, to enable comparability with other companies and make informed investment decisions.

Shareholders have multiple existing channels to engage with us, including our annual board chair’s roadshow, our investor relations team, and our house brokers. The chair, board members and executive management are always available for consultation with shareholders. In practice, we have experienced minimal engagement from investors specifically on audit and assurance related matters, which confirms shareholder consultation on the Audit and Assurance Policy should not be mandated in the UK corporate landscape.

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?

We recommend that the three elements of Environment, Social and Governance are considered separately from each other, with changes adopted independently to ensure they are both appropriate and relevant. Labelling the three areas under one term, and badging them as ESG is misleading, and does not improve transparency or read across consistency. It allows for aggregation and a lack of meaning.

We acknowledge that greater objectivity and consistency on environmental disclosures, social disclosures and governance disclosures is required across all global markets and recommend that the FRC continues to work with other regulatory bodies worldwide to enable investors to make informed investment decisions based on reliable and comparable performance measures.

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?

There is not enough clarity within the proposals to understand if they are proportionate, as it is difficult to assess how much additional resources, management time and associated assurance costs are required to comply with the amendments to the Corporate Code and related legislation. Furthermore, it is unclear if any additional requirements will be necessary to be completed by the external auditors, to validate the accuracy of the board declaration. Any additional work undertaken by the external auditor in this area would result in additional costs for the company.

We consider including the whole board to be accountable for the declaration creates an additional obligation that the supervisory nature of the non-executive role should not be expected to fulfil. Additionally, the declaration requirement for all Directors' is not necessarily consistent with the role of non-executive board members, who may not be accountants, but do bring other skills to the board room debate.

We therefore consider a subset of non-executive directors, with the most appropriate skills, to have a specific role defined responsibility to provide independent oversight and scrutiny of the declaration. Such a prescribed role should be short of being accountable for, or providing assurance over the declaration itself.

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?

Outside of the area of internal control over financial reporting, assessing effectiveness of operational and compliance activities is subjective and very much dependent on the culture and risk appetite of the company and its board.

Disclosure of material weaknesses and failures identified during the year, would require investment in enhanced continuous monitoring of risk management and controls; and would not necessarily prevent or detect future risk events or control issues. A material control error or failure that is detected and fixed during the year, without any significant business operational impact or financial impact of already disclosed financial results, is not in our view a material weakness requiring disclosure in the annual report or require inclusion within a board declaration.

If the ultimate impact of a risk materialising during the year was unforeseen or underestimated (e.g. COVID-19 pandemic), it is critical for the company to react and respond appropriately when such a risk event occurs (e.g. demonstrating resilience and if the company can demonstrate fast, effective decision making to react to the emerging risk). Therefore, a company's risk management and control framework need to have sufficient flexibility to be able to react and adapt to unknown risk, unknown magnitude events, so called "Black Swan" events. Having a rigid and over engineered monitoring framework may impede the decision-making processes should such an event arise in the future.

Therefore, in summary continuous monitoring of the risk and control framework effectiveness throughout the reporting period would be too onerous. We consider it would be more beneficial for the board declaration to conclude at a point in time, the adequacy of the risk management and control framework monitoring activities deployed by a company during the reporting period.

Guidance is needed from the FRC to understand:

- The level of detail needed in the board declaration when disclosing a material weakness, especially as such disclosures could be considered commercially sensitive.
- The period to be covered in the board declaration during which a material weakness is required to be disclosed. It was unclear in the consultation whether:
    - the material weakness was to be disclosed if it occurred during the financial reporting year.
    - Or also covered the post financial year end period up to the issuance date of the published annual report, which can occur several months after the company's financial year end.

Therefore, we suggest "as at the balance sheet date" declaration is preferable and easier to assess reliably than the following possible alternatives:

- during the financial period.
- during the period from the start of the financial year up to the date of issuance of the annual report.
- as at the date of issuance of the annual report

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?

The narrative is important and needs to be consistent with the company's reported financial performance. The existing principle in the Code, that the board should present a fair, balanced position of the company financial performance and prospects already illustrates the need for this consistency. Within the narrative it could be appropriate for companies to expressly confirm they have implemented controls and obtained assurance to support reliability of specific areas of the narrative. The control and assurance activities undertaken outside of financial reporting could be included in the company's Audit and Assurance Policy.

However, changing from 'financial' to 'reporting' in the board declaration greatly broadens the scope of processes and supporting controls required to be assessed as effective outside of financial reporting. Assessing the effectiveness of those controls is subjective and will invariably increase the costs to document and assess the effectiveness of a wide range of controls. It will also lengthen the time required to undertake the summary of internal and external assurance obtained to support the board declaration.

Furthermore, the very broad scope of the board declaration may force companies to invest in enhanced monitoring activities or incur additional assurance costs in areas not critical to investors' decision making. In effect, our view therefore is that changing 'financial' to 'reporting' in the declaration, reduces the likelihood the board will seek external assurance over their risk and control framework effectiveness, due to the increased assurance scope and consequent costs. Such an outcome would not be aligned to the overall ambition of the Corporate Code reforms to strengthening corporate governance reporting effectiveness.

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?

Adopting a prescribed framework (e.g., COSO 2013) is considered an appropriate and necessary corporate governance requirement for a large public interest listed company. Adopting such a framework would enable the company to describe how it monitors its adherence to the prescribed framework it has chosen to follow.

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?

As described above in Q16, adopting a prescribed pre-defined and principle-based framework facilitates an assessment of a company's adherence to pre-defined framework. A company board could declare; it had adhered to the prescribed framework and present the basis of how it has reached that conclusion.

Alternatively, if the board concludes a principle (or standard) had not been adequately adhered to, it could declare:

- the reasons why a principle in the framework was not adequately adhered to.
- the impact or resulting risk arising.
- and could describe (if deemed necessary) the mitigating activities or planned remediation to enable the board to declare it has adhered to its chosen framework in future financial years.

The definition and assessment of a material weakness in internal control over financial reporting is defined under the US Sarbanes Oxley Act, and guidance issued by the US regulator, the PCAOB. It would be helpful if a similar definition is adopted for UK companies, to identify if a financial reporting related material weakness had arisen in the period, which had not been adequately resolved or mitigated by the financial year end.

Assessing if a control deficiency or control failure is a material weakness outside of financial reporting is much more subjective and potentially publicly disclosing such a weakness would be more commercially sensitive or carry a reputational risk, both of which may impact the company's share price.
Guidance is required from the FRC on the degree of disclosure required for a non-financial reporting related material weakness, if such a weakness is considered commercially sensitive by a company board.

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

There is the need for practical examples from the FRC as to what should be covered in a board declaration of effectiveness of operational and compliance and reporting activities.

The FRC should be transparent on the consequences for a company board if they fail to adequately disclose a reporting, operational or compliance material weakness, which existed in the company, but the board was unaware of at the time of its declaration.

If the external auditor chooses to test key controls over financial reporting as part of its external audit work and obtains assurance they are operating effectively, it is currently unclear whether the company board can utilise those test results to support its declaration. One set of testing that meets the needs of both the external auditor and the board is far more efficient and cost effective than mandating two separate control tests over the same financial reporting control, one test for the board declaration and the other test for the external auditor opinion.