BOARDROOM REVIEW

12 Horbury Mews
London W11 3NL

Telephone: 077 6747 5641
Facsimile: 020 7727 0779

Email: tlong@boardroomreview.com
Web: www.boardroomreview.com

Sir Christopher Hogg
Chairman
Financial Reporting Council
Aldwych House
71-91 Aldwych
London
WC2B 4HN

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Dear Christopher

Comments in response to the Call for Evidence: Review of the Effectiveness of the Combined Code

Excerpt

Sir David Walker asked me to provide a few thoughts on the board effectiveness review process from Boardroom Review's portfolio of work (see*Note), which may be helpful in your review of the Combined Code. There are five principle statements of fact, personal observations, and, where appropriate, suggestions for improvement with regard to the Code Principles outlined below:

A.6 Performance evaluation
Main Principle
The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.
Supporting Principle
Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties). The chairman should act on the results of the performance evaluation by recognising the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

Code Provision
A.6.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors has been conducted. The non-executive directors, led by the senior independent director, should be responsible for performance evaluation of the chairman, taking into account the views of executive directors.

Response:

1 Statement: Currently the Combined Code recommends that the Board conducts or commissions an internal or external board effectiveness review annually. The Combined Code is not prescriptive with regard to the approach or disclosure of the review.

Observation: It is difficult to calculate exact numbers of companies who are conducting internal and external reviews each year due to poor disclosure. In 2008/9 it appears that over 50% of the FTSE 100 did not conduct an external review, although some of them have conducted external reviews within the last three years. There are a number of FTSE 100 companies who have never commissioned an external review.

Suggestion: The disclosure statement in the Annual Report should explain the Board's cycle of internal and external reviews, and the year of the last external review. Chairmen should explain why an external review has not taken place within a three year period.

2 Statement: Common wisdom and practice suggest that an external review should take place every three years, replaced by internal reviews in the intervening two year period.

Observation: For those companies already using a periodic external review, this cycle appears to work well. Occasionally Chairmen decide to commission an additional external review within a three year period due to a dramatic change in Board composition, financial restructuring or business focus.

3 Statement: Many companies do not disclose the outcomes of an external board effectiveness review in a meaningful or transparent way.

- Observation: The reluctance to disclose the outcomes of a review relates partly to the nature of the review process, which in many cases protects confidentiality and anonymity, and partly due to fear of litigation.

Suggestion: The annual disclosure should explain the review process (e.g. on-line or off-line questionnaires, interviews, board and committee observation, review of papers, workshop, written report, board discussion), significant recommendations and/or any changes or improvements that the Board has committed to following the review.

4 Statement: Many annual disclosures do not reveal the name of the reviewer, and there is no requirement to state their independence.

Observation: It is difficult for shareholders and stakeholders to judge the quality, objectivity and integrity of an external review - companies are still reluctant to name the reviewer in their Annual Report, and in many cases the reviewer has ongoing and significant relationships with the Board.

Suggestion: The annual disclosure should always name the reviewer, and disclose whether the reviewer provides any other services to the Board and/or the Company.

5 General Statement: There is very little comment or questioning on the review process and its outcomes from shareholders and stakeholders.

Observation: Shareholders and stakeholders, including regulators, appear to be unaware of the impact and value of the review process, and very few questions are asked about the review in private or public meetings with Chairmen.

Suggestion: Shareholders and stakeholders should proactively assess the way in which Boards evaluate and improve their own performance, and should take particular note of the internal and external review cycle, stated outcomes, and commitments to change in the annual disclosure.

*Note: Boardroom Review was founded in 2005 by Dr Tracy Long to give independent and informed advice to chairmen and directors on the effectiveness of the Board and its Committees, and to offer a process which is intellectually engaging and unbureaucratic. Boardroom Review has worked with 34 organisations over the last four years, including 22 FTSE companies.

Although every Review is bespoke, the aim is to enhance the quality of Board and Committee decision making and debate, facilitate communication and the quality of information between executives and non-executives, and maximise individual contribution, providing the Board with a catalyst for discussion and change if appropriate.

Clients over the last twelve months have included Anglo American plc, Aviva plc, Britannia Building Society, British Land plc, GlaxoSmithKline plc, Homeserve plc, Lloyds TSB plc, Mitsubishi UFJ Securities, Premier Foods plc, Trinity Mirror plc and Wolseley plc.