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22 November 2013

Dear Sirs

Response to FRC Exposure Draft: Guidance on the Strategic Report

I am writing on behalf of GC100 to respond to the above discussion paper.

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. There are currently over 125 members of the group, representing some 81 companies.

Please note, as a matter of formality, that the views expressed in this letter do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

Part General Observations

The GC100 welcomes the guidance in general terms as a helpful description of both the provisions of the New Regulations (as defined) and the FRC's interpretation of how this should be applied.

It is our view that compliance with the Strategic Report will be a case of reordering information contained in the current Annual Report rather than something that will, at least initially, be the catalyst for large scale change and redrafting. It is likely that there will be evolution over time of the use of the "company voice" in corporate reporting, but this will be a gradual transition, rather than an immediate change precipitated by the Strategic Report. If this is not the FRC's intention the guidance should be more explicit on this point.

As many GC100 members already focus on best practice reporting, and Boards appear generally comfortable with what forms a true and fair view of their business, we believe that it will continue to be this, rather than the New Regulations, that will inform their reporting decisions (save as for the limited number of new provisions). For those companies that provide little in the way of strategic narrative or a review of their company's annual performance and forward looking objectives, the guidance provides a helpful reminder of the FRC's objectives and the value a concise and relevant annual report can provide to the resource allocation decisions of current or potential investors.

A broader challenge appears to be implementing verifiable and measurable processes under which the information contained in the Strategic Report is deemed to be fair, balanced and understandable, something which the guidance provides no specific information on (see further

GC100 Group

The Association of General Counsel and Company Secretaries of the FTSE 100

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comments in our response to question 5).

The GC100 notes recent comments by Sue Harding of the Financial Reporting Lab that plans are afoot to review and potentially consult on moving certain sections of the annual report online, or make this more technologically enabled. The GC100 continues to believe that, in the long-term, it would be desirable for a form of disclosure such as the Annual Directors' Statement to be made available online only.

The GC100 welcomes the fact that work is underway to review online reporting more generally and strongly encourages and supports its progress. We do however question how the results of this process will differ from the Annual Directors' Statement proposal originally issued with the draft Strategic Report legislation (that did not ultimately come to fruition) and hope any future consultation will take account of, and look to resolve, the previous challenges in moving information online, including the concerns of those with multiple listing requirements.

Diversity Disclosures

There is concern amongst GC100 members around how the objective of diversity reporting has been captured by the New Regulations and that no guidance is provided on this in the Exposure Draft. For those companies that produce group accounts, which includes our membership, under section 414(C)(10)(b) of the New Regulations the breakdown of persons of each sex who were senior managers of the company must include the number of persons of each sex who were the directors of the undertakings included in the consolidation. We feel it should be up to the company to decide on who is defined as a senior manager, and allow investor sentiment to establish a market standard.

Subsidiary companies and other undertakings can be created for a number of purposes, with many having standard boards that focus on intragroup matters without external creditors. Directors who sit on some of these group subsidiary entities are often head office functional employees and in many instances are not senior members of executive management. We feel that unless clarity is provided on this point, meaningless diversity disclosures will be provided which may obscure a company's true progression against diversity metrics (such as the targets set out in the Davies Report in a UK context) at both Board and senior management level. Such disclosures do not support the materiality thresholds promoted by the guidance nor do they make the report precise by the inclusion of unnecessary information that has no impact the investment case.

The GC100 further notes that the reference to the diversity reporting provisions in the table on page 40 of the guidance is unhelpful. By bracketing the requirement around which directors are to be included in the consolidation, it makes it appear as if a quoted company preparing group accounts has an option around what constitutes a senior manager, which is not the case under the New Regulations (i.e. they must include the directors of the companies that form part of the consolidation).

Summary Financial Statements and 'Supplementary Information'

Guidance on how to communicate with shareholders in a summary, relevant and cost effective manner is something that requires further consideration by the FRC. The GC100 notes the response already submitted on this point by BP plc and agrees with their conclusion that, due to the requirement that the Strategic Report is reproduced in its entirety in any summary document, private/retail shareholder documents are likely to be longer (and in some cases significantly so) than they are currently, which will have associated cost implications. The net result of this position

could either be companies choosing not to send shareholders an annual report or a summary document (using the Companies Act deemed consent provisions) purely on the grounds of cost, or spending significant sums on much larger 'summary' documents containing a verbatim Strategic Report and other supplementary materials. Both options appear sub-optimal and not what the legislation envisaged.

The GC100 is concerned by references in the Exposure Draft to the provision of supplementary information/materials and the use of appendices (as set out in paragraph 3.12). Whilst cross referencing in the Report and Accounts is commonplace, GC100 members do not recognise the use of supplementary information/materials as being current market practice and the inclusion of such information will add further complexity to companies that still wish to send summary financial statements to shareholders.

Narrative Reporting

We feel it would be of value to build on the concept of the narrative report as set out in Section 4. This provides a useful explanation of what the FRC deem to be the narrative report, as this is an expression much used in corporate reporting, but without a statutory definition. It would be helpful for the FRC to provide an example of an area not covered by the legislation in which they think good narrative reporting would supplement the financial statements, providing linkage to the 'thematic review' and 'storytelling' approaches much advocated by corporate reporting best practice and the IIRC .

We would recommend that paragraph 4.4 ends with the sentence '...so the financial statements give a true and fair view of the Company's performance' to provide better linkage back to the Companies Act.

Questions 1 and 2

The illustration is a helpful one page summary of the reporting requirements and provides an aide memoir for those involved in the drafting process. We think it would be beneficial for the document purpose box to end with '... in a fair, balanced and understandable manner' to reinforce this provision of the UK Corporate Governance Code as we feel it is equally applicable to listed and non-listed companies. It also builds on the messaging around this, which is used consistently throughout the Exposure Draft.

As the Strategic Report provides increased disclosure requirements for quoted companies, we feel that there is a missed opportunity generally to provide better cross referencing with the obligations of the management report required by DTR 4.1 (as defined in DTR 4.1.8), and as referenced in the table. Over time it appears the contents of the management report has become less strategic and more akin the demands of the analyst community and investor modelling. As the Strategic Report is primarily for shareholders, the verbatim use of the contents of the management report in the Strategic Report, which is a common in corporate reporting, would therefore now seem potentially counterintuitive (although it is likely the information will be contained elsewhere in the Annual Report).

The GC100 feel additional guidance on the linkage between these different pieces of legislation would be very helpful to our members. This would link all the relevant pieces of legislation upon which a company must comply/consider through its narrative reporting, thus ensuring the Strategic Report fulfils its strategic aims.

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Question 3

On section 3 more generally, we agree that the primary purpose of the Annual Report is to report to current and prospective shareholders. However, we feel that, from a GC100 membership perspective, there is over emphasis on the significance of the Annual Report in this section when compared, for example, to the results RNS that must be released under the Disclosure and Transparency Rules. The feedback that we get from members is that all necessary information to inform investment decisions of current shareholders is generally taken from the RNS, rather than the printed Annual Report, which is more a medium for the collection of audiences identified in paragraph 3.7 (to which we would also consider adding prospective employees). The Annual Report remains a fundamental document, incorporating information not otherwise released, such as on Directors Remuneration, but we would consider reflecting in the guidance its position in the overall reporting suite and how the New Regulations will impact this.

We would suggest consideration is given to the caveat provided in paragraph 3.11 that effective communication ‘...will not *usually* be achieved through a checklist style to drafting...’. It appears the sentiment of the legislation and the guidance would be that it would never be entirely suitable for a true and fair view of the financial statements to be offered to the reader if a tick box approach were adopted.

The GC100 considers the references to the use of appendices in paragraph 3.12 to be inconsistent with market practice and the examples to be unhelpfully vague. We are also concerned as to how the safe harbours given in the directors’ report, directors’ remuneration report and the Strategic Report would be imported into this. We also think this raises similar questions to those mentioned above around how the inclusion of such information would impact on the summary financial statements.

Supplementary information may be information that could go straight online in support of the financial reporting lab’s proposals as previously noted; however, we think this should be considered carefully in view of previous failed attempts to move reporting online.

Question 4

This is an appropriate summary. It may be useful for the guidance to reinforce that ultimately decisions around materiality lie with the Directors as materiality levels will be different from business to business. We would also recommend noting that materiality thresholds should be reviewed annually as they may change year-on-year depending on internal and external factors, such as business performance and/or the macro-economic environment.

The materiality focus of paragraph 5.6 reinforces the point of removing the requirement in respect of the gender balance on the Boards of subsidiary companies as this would not be considered material or a valuable contribution to a concise report.

Question 5

We agree with the examples. The GC100 notes that there is a general concern among members about the lack of formal guidance on what constitutes ‘fair, balanced and understandable’. We feel that, while prescriptive requirements would not be appropriate, the guidance provides a good opportunity for the FRC to address this, including general examples of disclosures that satisfy these requirements.

In the context of communication principles, we feel that in this section the guidance should introduce the concept of a thematic review, noting the current best practice emphasis on telling the company's story and how this might be achieved to align the guidance with the external reporting environment.

Question 6

It is appropriate that companies annually review the structure and presentation of their Strategic Report to ensure it continues to meet its objectives; just as they should do currently with their business reviews. You may wish to consider the recognition in paragraph 6.27 that comparability of items between years enhances the usability of the report.

Question 7

Where clarity on 'content elements' can be provided it would seem appropriate to do so provided it remains within the requirements in the New Regulations. We would query whether the Strategic Report containing a description of an entity's principal objectives is consistent with the wording of section 414(C)(8)(a). The FRC may wish to review from where the focus on 'objectives' is derived, and footnote accordingly.

As the human rights disclosure is a new requirement and not referenced anywhere else in the body of the guidance, we would query whether further guidance/linkage examples may be helpful in this regard. This is on the basis that human rights issues are going to differ markedly between organisations and the sectors in which they operate. Without guidance, this may turn into a boilerplate statement.

Question 8

The level of guidance provided would seem apposite. We would query as to whether paragraph 6.41 needs further explanation as to how the FRC see the Annual Report forming a cohesive document (for example, through cross referencing?). This is considered earlier in the guidance and it may be appropriate to provide appropriate references back to this in this section.

Question 9

We think the guidance differentiates well between the concepts of business model, objectives and strategies. We think the diagram in paragraph 6.29 helpfully depicts this. However, we would extend the diagram to include KPI's, risks and governance/remuneration as part of the model to show how the Strategic Report fits into the Report and Accounts as a whole. These are areas that are covered by the guidance, and generally in section 6, so it would also be valuable to include them as key elements of how a company delivers its strategy, which should therefore link into the narrative of the Strategic Report.

Question 10

We found the linkage examples useful. The only omissions we found were in respect of how the Strategic Report relates to the management report required under DTR 4, further references to how certain linkages support the financial statements portraying a true and fair view of the Company (in a fair, balanced and understandable manner) and reference to the human rights issues disclosure.

We would welcome the opportunity to discuss these issues with you further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mary Mullally', with a horizontal line drawn through the middle of the signature.

Mary Mullally
Secretary, GC100
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