RIVER AND MERCANTILE GROUP

River and Mercantile Group PLC – Response to December 2017 Proposed Revisions to the UK Corporate Governance Code

28 February 2018

Introduction

River and Mercantile Group PLC ('RMG') listed in June 2014 on the premium section of the Main Market of the London Stock Exchange. Under the current UK Corporate Governance Code (the 'Current Code'), RMG is considered to be a smaller company, in that it is below the FTSE 350. RMG is in compliance with the Current Code.

RMG is an investment solutions business with a current market cap of £262.71 million. Its statutory profit after tax as at 30 June 2017 was £13.4 million and has 243 employees (as at the date set out above).

As at the date of submission, the RMG board of directors consists of 4 executive directors, the Chairman, a non-executive director (who is not considered to be independent) and 3 independent non-executive directors.

General comment on the Proposed Revisions to the UK Corporate Governance Code (the 'Proposed Code')

We do not agree that the smaller companies' exemptions for companies outside of the FTSE 350 in the Current Code be removed. For the purpose of this response, the smaller companies exemptions in the Current Code are as set out paragraph 47 of the December 2017 Consultation Paper (the 'Consultation Paper') and are the exemptions for smaller companies in provisions B1.2, B6.2, B7.1, C3.1 and D2.1 of the Current Code.

Our concern is that this will place an undue financial burden and time cost on smaller companies by increasing the costs associated with compliance with the Proposed Code provisions. This in turn may discourage smaller companies from listing in the face of increased governance costs and resource requirements.

We note that the Consultation Paper at paragraphs 46 – 50 considers the impact of the removal of the smaller companies' exemption. It is worth noting that while a company may be outside the FTSE 350 and may be of a similar size and structure, it may also not be – it may therefore be helpful to consider a different criterion for a smaller company, such as the number of employees or the annual turnover of a company. This approach is not novel and has been used in the application of the Non-Financial Reporting Directive and Gender Pay Gap Reporting. It is critical that smaller companies are not dissuaded from listing by unduly onerous corporate governance requirements.

We note the FRC's view that smaller companies should "strive for the highest standards of corporate governance". It is our submission that the Current Code exemptions for smaller companies provide an appropriate balance and allow a proportionate application of governance requirements to smaller companies.

Provision 11 of the Proposed Code

The effect of this for RMG will be that two additional independent non-executive directors will need to be recruited, in order for RMG to comply with the requirement that independent directors constitute a majority of the board. We have recently recruited an additional independent non-executive director and the recruitment fees for this position were in excess of £32,000. We believe this to be market standard for the recruitment of a non-executive director in the financial services sector.

There is also a significant time cost associated with the recruitment of an independent non-executive director – from drafting role specifications, short listing candidates and interviewing candidates to Nomination Committee meetings to decide on a suitable candidate. On average the time frame from initial instruction to an executive recruitment agency to the appointment of a candidate is on average between four to six months. It is worth noting that specialist sectors, such as the financial services sector, present additional challenges as the pool of suitable candidates with relevant experience is small and regulatory requirements of the sector (FCA approval of candidates and the Senior Managers and Certification Regime) further narrow the pool of suitable candidates. It also takes significant time and resources to conduct training and inductions for new non-executive director and a period of time before that non-executive director has gained the requisite knowledge of the role and the company.

We do not agree that the chair should be treated as an independent non-executive director. We believe there are three categories of director: the chairman (who should be considered neither as a non-executive director nor as an execute director), non-executive directors and executive directors.

The additional annual directors' fees for two independent non-executive directors will be £85,000 per annum.

It is worth highlighting that, as per the table from Practical Law's Annual Reporting and AGMs 2017 set out on page 4 of the consultation paper on the Proposed Code, the largest area of non-compliance amongst FTSE 100 and FTSE 250 companies with the Current Code was the requirement to have 50% of iNEDs on the board, with 4 FTSE 100 companies failing to comply and 25 FTSE 250 companies failing to comply with this provision. It is therefore reasonable to conclude that as a number of large listed companies struggle to comply with this requirement of the Current Code, smaller companies will equally struggle with this and with less resource to absorb the financial and time costs associated with compliance.

Questions as per Consultation Paper (please note that we have not commented on all questions)

Q1. Do you have any concerns in relation to the proposed Code application date?

Yes, our key concern relates to the removal of the smaller companies exemption in the Current Code. Approximately six months for the recruitment of additional independent non-executive directors for companies with a 31 December year end is insufficient. As the removal of this exemption will coincide with the requirement to comply with the other provisions of the Proposed Code, a six month lead in time is insufficient.

It is our submission that either the removal of the smaller companies' exemption be phased in over two years (in that it would apply to accounting periods from 1 January 2021) or a longer transition period by provided for compliance with the Proposed Code such that the Proposed Code applies to accounting periods from 1 January 2020.

Q5. Do you agree that 20 per cent is 'significant' and that an update should be published no later than six months after the vote?

No, it is our view that 20% is not a significant number of votes against a resolution. The threshold of 20% is too low bearing in mind that an overwhelming majority of shareholders have approved the resolution. It is our submission that 30% is a more appropriate threshold given the additional steps that follow this in the Proposed Code.

We are concerned that the steps required under the Proposed Code following a significant vote against a resolution are onerous and in part impractical. Consultation with a small group of shareholders may prove to be impractical and time consuming. It is arguably not the best use of company resource and time when the overwhelming majority of shareholders were in favour of the resolution. We feel that the proposed threshold would result in too much weight being given to a minority position, particularly given that position may be held by a single dissenting shareholder.

We strongly support shareholder engagement and the need for the board to understand the views of shareholders. It is however unduly onerous to require an action plan of shareholder consultation, an interim update within six months and a final summary where only 20% of shareholders voted against a resolution.

We submit that a proportionate approach would be to:

- extend the IA public register to all companies under the corporate governance code to encourage greater shareholder engagement (as opposed to the current approach of those companies in the FTSE All Share Index);
- increase the threshold under Provision 6 of the Proposed Code to 30% of votes cast against a resolution; and
- remove the requirement to provide an interim report.

Q6. Do you agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years?

As set out above, we do not agree with the removal of the smaller companies exemptions as set out in the Current Code. The Current Code requires that the board undertakes a formal and rigorous evaluation of its own performance and that this is reported on in the annual report. It is our submission that imposing the requirement to conduct a triennial independent board evaluation on smaller companies is disproportionate. The Current Code provisions requiring annual self-evaluation are adequate and, if undertaken rigorously and reported on in the annual report, will foster board accountability and good governance.

There is a significant time cost to boards associated with independent board evaluation – ranging from interviews with independent consultants and the review of the output reports by the board. There is also a financial cost of approximately £28,000 which alone is not significant but when added to the total cost to a smaller company following the removal of the smaller companies' exemptions becomes a significant cost.

Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

We do not believe that the chair should be considered non-independent after serving 9 years on the Board. This is due to the fact that an existing non-executive director may have been promoted into the position of chair and as a result may have a longer tenure than other directors, whilst their independence is not impacted. Instead, we believe it may be more appropriate for a chair to be appointed for a certain period (e.g. 3 years) and for this to be renewed as appropriate.