



FINANCIAL REPORTING COUNCIL

**CONSULTATION ON AMENDMENTS TO THE 2003
COMBINED CODE:**

SUMMARY OF RESPONSES

JUNE 2006

SUMMARY OF RESPONSES

Introduction

1. This paper summarises the responses to the public consultation on the proposed amendments to the Combined Code held between January and April 2005. Respondents are listed in the annex to this summary, and copies of individual responses are available on request from codereview@frc.org.uk.
2. In total 38 responses were received, including 13 from listed companies and their representative bodies, 14 from investors and their representative bodies and six from the accountancy profession.
3. The FRC consulted on four proposals to amend the Combined Code:
 - to amend provision B.2.1 to allow the chairman to sit on the remuneration committee where he or she was considered independent at the time of appointment;
 - to amend section D.2 to provide shareholders voting by proxy with the option of withholding their vote, and to require the publication of details of proxies lodged at the AGM where votes are taken on a show of hands;
 - for those provisions that require companies to “make information available” (provisions A.4.1, B.2.1 and C.3.3), to enable the requirement to be met by placing the information on the company’s website; and
 - to set out in Schedule C of the Code the disclosure requirements in the Listing Rules to ensure companies are able to find details of all relevant requirements in one place.
4. All four proposals enjoyed strong support, and the majority of comments were on the drafting of the amendments rather than on points of principle. The FRC is therefore proceeding with all four proposals, but with some amendments to the wording of the amendments relating to voting and “making information available” to make them consistent with new statutory requirements in the Company Law Reform Bill, and to clarify the legal status of a ‘vote withheld’.

Remuneration committee composition (provision B.2.1)

5. The amended wording proposed in the January consultation document was:

The board should establish a remuneration committee of at least three, or in the case of smaller companies two, ~~members, who should all be~~ independent non-executive directors. *In addition the company chairman may also be a member of, but not chair, the committee if he or she was considered independent on appointment as chairman.* The remuneration committee should make available its terms of reference, explaining its role and the authority delegated to it by the board. Where remuneration consultants are appointed, a statement should be made available of whether they have any other connection with the company.

6. 36 respondents commented on the proposal. Only one was opposed in principle to the chairman sitting on the committee. 21 respondents supported the proposed amendment as drafted, while the others commented on one or more of the conditions to be attached to membership of the committee as follows:
- Six respondents, all representing the views of investors, felt that the chairman should only be allowed to remain on the committee if they continued to demonstrate 'independence' throughout the period of their appointment.
 - One respondent felt that the chairman should be able to serve on the committee regardless of their status on appointment and that the wording "if he or she was considered independent on appointment as chairman" should be deleted.
 - Four respondents felt that the chairman should be able to sit on the committee instead of, rather than as well as, the minimum number of independent NEDs. One respondent felt that this option should only be made available to smaller companies.
 - Three respondents felt that the chairman should be allowed to chair the committee.
7. In the light of these comments, the FRC proposes to adopt this amendment without any further changes.

Votes withheld and publication on websites (provisions D.2.1 and D.2.2)

8. The amended wording proposed in the January consultation document was:

Reverse the order of provisions D.2.1 and D.2.2.

Add new wording to current provision D.2.2:

The company should propose a separate resolution at the AGM on each substantially separate issue and should in particular propose a resolution at the AGM relating to the report and accounts *For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote.*

Replace existing provision D.2.1 with:

The company should ensure that all valid proxy appointments received for the AGM are properly recorded and counted. For each resolution, after a vote has been taken, except where a poll is called, the company should ensure that the following information is given at the meeting and subsequently made available on a website:

- *the number of shares in respect of which proxy appointments have been validly made ;*
- *the number of votes for the resolution;*
- *the number of votes against the resolution; and*
- *the number of shares in respect of which the vote was directed to be withheld.*

9. 36 respondents commented on these proposals. All but two supported the broad thrust of the proposals, although a number had comments on the detail as summarised below. One listed company felt that while companies should be encouraged to follow these practices they should not be made subject to the Code. The CBI, while noting that there were mixed views amongst its members, reported that the majority would prefer the decision whether to provide a 'vote withheld' option to remain voluntary and not be incorporated in the Code.

10. In respect of 'votes withheld', one respondent said that if the amendment were to be made the Code should also explain the meaning of the term 'vote withheld' as without an explanation it could create confusion and uncertainty. Another respondent noted that the provision of a 'vote withheld' option should not affect the legal position whereby only votes cast for or against the resolution are relevant in determining whether it is carried. Two respondents felt that the provision should refer to "votes consciously withheld" in order to distinguish them from other forms of abstention.
11. In respect of the publication of proxy votes on websites, the main comments were:
- Five respondents (including all the main investor representative bodies) noted that, to be consistent with the proposed requirements in the Company Law Bill relating to publication of poll results, the Code provisions should apply to all general meetings, not just the AGM. In addition three respondents noted that references to the website on which the information was made available should also be consistent with the Bill.
 - Three respondents (including the ABI) noted that the proposed requirements in the Company Law Bill in relation to poll results would not require companies to publish the number of votes withheld, only those cast for or against the resolution. They therefore considered that the Code provisions should be extended to cover all votes, not just those taken on a show of hands, even though this would lead to some duplication.
 - Two respondents felt that companies should be required to disclose results of voting through a regulatory news release as well as on a website, and a few respondents made other suggestions on the detailed drafting the proposed new provision D.2.2.
12. In addition the ABI, IMA and two other respondents felt that the Code should be amended to require the chairman to call a poll on all resolutions where the proxy count suggests a possibility that the result of a poll would be different from a show of hands.
13. In the light of these comments, the FRC proposes to adopt these amendments subject to changes to the wording to make them consistent with new statutory requirements in the Company Law Reform Bill, and to clarify the legal status of a 'vote withheld'. The revised wording reads as follows:

Reverse the order of provisions D.2.1 and D.2.2.

New provision D.2.1 [current provision D.2.2]

At any general meeting, the company should propose a separate resolution ~~at the AGM~~ on each substantially separate issue and should in particular propose a resolution at the AGM relating to the report and accounts. For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution.

New provision D.2.2 [replacing existing provision D.2.1]

The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, after a vote has been taken, except where taken on a poll, the company should ensure that the following information is given at the meeting and made available as soon as reasonably practicable on a website which is maintained by or on behalf of the company:

- *the number of shares in respect of which proxy appointments have been validly made ;*
- *the number of votes for the resolution;*
- *the number of votes against the resolution; and*
- *the number of shares in respect of which the vote was directed to be withheld.*

Making information available (provisions A.4.1, B.2.1 and C.3.3)

9. The amended wording proposed in the January consultation document was:

Footnotes to provisions A.4.1, B.2.1 and C.3.3

The requirement to make the information available would be met by ~~making it available on request and by~~ including the information on the company's website.

Schedule C

The following information should be made available (which may be met by ~~making it available on request and~~ placing the information ~~available~~ on the company's website:

- [bullet points as at present]

10. 33 respondents commented on this proposal. The majority of them supported the proposed amendment as drafted, but comments were received on two points:

- Six respondents (including the NAPF) opposed the proposal, in part because it was felt that private shareholders could be disadvantaged as a result of this proposal; however this was not raised as a concern by the UK Shareholders Association, which represents private shareholders.
- Four respondents suggested that the wording should be amended to allow for circumstances where smaller listed companies, for example investment trusts, do not maintain their own website.

11. In the consultation document companies we asked to say whether they received requests from shareholders for this information. Only one company responded on this point. They had received no such requests.

12. In the light of these comments, the FRC proposes to adopt this amendment but, as with the previous amendment, to amend the wording so that it is consistent with the wording of the Company Law Reform Bill. The revised wording reads as follows:

Footnotes to provisions A.4.1, B.2.1 and C.3.3

The requirement to make the information available would be met by ~~making it available on request and by~~ including the information on ~~the company's~~ a website that is maintained by or on behalf of the company.

Schedule C

The following information should be made available (which may be met by ~~making it available on request and~~ placing the information ~~available on the company's~~ a website that is maintained by or on behalf of the company:

- [bullet points as at present].

Setting out the Listing Rules requirements in Schedule C

18. The amended wording proposed in the January consultation document was:

Replace the opening paragraph of Schedule C with:

Paragraph 9.8.6 of the Listing Rules states that in the case of a listed company incorporated in the United Kingdom, the following items must be included in its annual report and accounts:

a statement of how the listed company has applied the principles set out in Section 1 of the Combined Code, in a manner that would enable shareholders to evaluate how the principles have been applied; [a new footnote 23 would be added here - see below]

a statement as to whether the listed company has

- *complied throughout the accounting period with all relevant provisions set out in Section 1 of the Combined Code; or*
- *not complied throughout the accounting period with all relevant provisions set out in Section 1 of the Combined Code and if so, setting out:*
 - (i) *those provisions, if any, it has not complied with;*

(ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and

(iii) the company's reasons for non-compliance.

In addition the Code includes specific requirements for disclosure which are set out below:

[new footnote 23:]

As noted in the preamble, the form and content of this part of the statement are not prescribed, the intention being that companies should have a free hand to explain their governance policies in the light of the principles, including any special circumstances applying to them which have led to a particular approach

19. 30 respondents commented on this proposal. All supported the proposal, although one respondent felt that the extract from the Listing Rules would be more appropriately added to the Preamble to the Code rather than Schedule C. In the light of these comments, the FRC proposes to adopt this amendment without any further changes.

ANNEX A

RESPONDENTS TO JANUARY 2006 CONSULTATION

Note: this list excludes those respondents that requested their comments remain confidential.

Allied Irish Banks plc
Association of British Insurers
Association of Chartered Certified Accountants
Association of Investment Trust Companies
Baillie Gifford & Co
Capital International Ltd
CBI
Chartered Institute of Management Accountants
Co-operative Insurance Society Ltd
Deloitte & Touche LLP
Gartmore Investment Management plc
Andrew Given
Governance for Owners LLP
Hermes Pensions Management Ltd
Independent Audit Ltd
Informa plc
Institute of Chartered Accountants in England & Wales
Institute of Chartered Accountants of Scotland
Institute of Directors
Investment Management Association
Jupiter Asset Management
The Law Society
National Association of Pension Funds
National Grid plc
Pensions & Investment Research Consultants Ltd
Premier Farnell plc
Jeremy Prescott
PricewaterhouseCoopers LLP
Prudential plc
Quoted Companies Alliance
Schroders plc
Shareholder Voting Working Group
Standard Life Investments Ltd
Tate & Lyle PLC
Tesco PLC
3i Group plc
UK Shareholders Association