

Email – Moortown Capital LLP

26 February 2018

Dear Sir/Madam,

I am a family office investor in mainly public company shares. I have been a non-executive director of a listed investment trust and of The AIC (390 listed investment company members with £175bn assets). I have spent 30 years as an FCA regulated investment banker, investment manager, and investment adviser, having held senior management positions in several firms, including Managing Director, Global Equities and Chief Investment Officer.

Comments relate to Appendix A – Proposed Revisions to the UK Corporate Governance Code

Section 1 – Leadership and purpose

Provisions

5. Engagement with shareholders – this should be evidenced in the annual accounts by a table stating number and %age of shareholder register consulted on governance and performance, and a mechanism should be put in place (e.g. email address, on-line form) to allow smaller shareholders to make their feelings known to independent board directors.

6. Threshold should be lower than 20% – I suggest 10%, as this is the threshold that would allow a shareholder to requisition a special meeting of the company or put its own resolution at a annual general meeting.

7. Eliminate conflicts of interest – exclude an institutional shareholder from obtaining direct board representation without allowing all shareholders to vote, it being a special resolution (75% majority required to carry). [I can quote a pending IPO where an institutional investor asked for a non-executive board seat after indicating he would invest. His candidacy had not previous been considered by the chairman, and it clearly creates a conflict where he is allocating money from investors funds by virtue of the fact that his employer is the fund management company making the allocation. The investor should be able to satisfy himself that all independent directors being appointed to the company are of sufficient calibre to act not only in his but in all shareholders interests.

8. Resignation of a non-executive director due to unresolved board issues – it should be required of the chairman to make a public statement as to the reasons for the person's resignation. [I can give examples where autocratic chairmen withhold information from fellow directors or push through their own agendas without proper debate or shareholder consultation as part of their own empire-building and the resigning director has no voice to blow the whistle on his chairman's activity].

Section 2 – Division of responsibilities

Provisions

12. There is no formal mechanism to allow for the SID and his/her fellow non-executive directors to replace the Chair. In my experience a bad chair can deliberately 'divide and conquer' by the withholding of information and responsibility from his fellow directors. It would be most helpful if a formal re-appointment of the Chair by his fellow directors could be incorporated each year, not just ratified by shareholders at AGM.

14. Consideration should be given to the number of directorships held by non-executives. I feel that there should be no more than three consecutive appointments held by any non-executive director, with perhaps overlap arrangements of 12 months to allow handover of roles to successors.

Section 3 – Composition, succession and evaluation

21 & 22. Any external evaluation should be available for inspection by shareholders. I can give an example where an evaluation determined that a board was dysfunctional and that the Chair should be replaced – only for everyone to agree that the report be filed in a bottom drawer and forgotten about; after spending nearly £80,000 of shareholders money in the process.

Although it is not the subject of this consultation I do feel that the UK Stewardship Code could do more to eradicate some of the issues that I have highlighted above. Institutional shareholders seem loathe to get their hands dirty when things are going wrong, but often overreact at the least minute (compelled by adverse publicity) following a disaster, after significant loss of shareholder value. This especially relates to inappropriate Chair and non-executive directors overseeing company strategy. Sometimes interested but smaller shareholders can identify ‘that the emperor has no clothes’ long before their larger institutional counterparts and I would like to see a mechanism by which their voice can be heard or else a compulsion on significant shareholders (anyone owning more than 5% of the equity) if a smaller shareholder contacts them and points out any matter which is a breach of the UK Corporate Governance Code. The Appendix B to the Code (Board Effectiveness) encourages boards to reach out to stakeholders to enable them to make more effective decisions, but in my experience this never happens unless a stakeholder has initiated the conversation.

Yours sincerely,

Dr Simon J Colson
Managing Partner
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Capital LLP