Financial Reporting Council
8th Floor, 125 London Wall
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By email: futurereporting@frc.org.uk

5 February 2021

Dear Sir or Madam,

GC100 Response to the Financial Reporting Council's Discussion Paper: A Matter of Principles: The Future of Corporate Reporting

I am writing on behalf of GC100.

GC100 is the association for the general counsel and company secretaries of companies in the FTSE 100. There are currently over 125 members of the group, representing some 85 FTSE 100 companies.

Please note that, as a matter of formality, the views expressed in this response do not necessarily reflect those of each and every individual member of GC100 or their employing companies.
GC100 commends the Financial Reporting Council ("**FRC**") on its proactivity with respect to its discussion paper on the future of corporate reporting, and its consideration of and responsiveness to calls for a thorough review and potential reform of the existing corporate reporting system. GC100 also recognises the effort that has gone into the discussion paper and thanks the FRC for publishing a thoughtful paper and its continued work in this area.

In the response set out in the annexes to this letter, GC100 does not attempt to provide a detailed answer to each of the questions raised in the FRC's discussion paper. Rather, GC100 wishes to highlight certain key principles for further consideration and reflection. GC100 hopes that further contemplation and discussions around these principles will result in mutually beneficial solutions for the FRC, those that prepare corporate reports and those that read them.

Thank you for the opportunity to share our views.

Yours faithfully,

Camelas
GC100 Secretary

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GC100 Group: The Association of General Counsel and Company Secretaries of the FTSE 100
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Annex I
GC100 Response – key principles

1. Key principles

1.1. In considering the discussion paper, GC100 has reflected on the following key principles in respect of the corporate reporting framework:

- Practicalities and frequency of reporting - avoiding undue burden
- Scope of reporting and the liability regime
- Flexibility and avoiding duplication
- Use of technology

2. *Practicalities and frequency of reporting - avoiding undue burden*

2.1. We support the FRC's aim of fostering better communication and engagement with stakeholders, and providing companies with greater flexibility in how the full range of corporate information is published. However, the measures taken to advance these objectives should not place an undue burden on companies.

2.2. The current annual reporting process already places a heavy burden on corporate reporting teams and an extension to multiple (linked) reports published at different times of the year risks making the process an all year round one. Such a reporting process would be inefficient and even more onerous, and not just for boards and executive management, but also for assurance providers.

2.3. The corporate reporting framework also needs to be viewed within the wider disclosure framework to which corporate issuers are subject (such as relevant stock exchange listing rules in the UK and overseas, and other domestic and international disclosure regimes e.g. MAR, to which corporate reporters are subject).

2.4. We believe that clarity and refinement of scope and content should be prioritised, so that companies know what standard(s) they are to be held accountable against and the threshold for reporting. For example, for a company with dual or multiple listings, it is not clear where or how the network of reports sits alongside ongoing disclosure obligations; or how such information would be collated into the proposed single storage location/data portal for regulatory reporting.

2.5. The threshold for disclosure and risk of over-disclosure is another concern. For corporate reporting to be useful, it must be meaningful. Accordingly, ongoing reporting obligations (under listing rules and/or disclosure regimes such as MAR) include appropriate materiality thresholds, with corporate reporters leaving other more "business as usual" updates and reporting to the annual report. For the proposed corporate reporting regime to have its intended effect, it would need to: consider and understand how it interacts with other reporting regimes and how these regimes would co-exist; avoid an undue burden on corporate reporters (i.e. all year round reporting of matters that are not material); and result in better, as opposed simply to more, reporting. We would also note that there is the possibility that a company's affairs may be adversely affected by third parties/competitors gaining unhindered access to information disclosed in compliance with any such enlarged reporting obligations.

2.6. Also, requiring each report to be produced on different dates poses its own challenge to report preparers. Some of these are set out below:

- Cross-referencing (thereby linking) the reports in the proposed network of reports as required may be more onerous as a result. Besides, some companies might find linking such reports more difficult than others.
- Company law requires report preparers to lay all corporate reports at annual general meetings ("**AGMs**"). Since these meetings must be held within a statutorily imposed timeframe, report preparers risk being unable to lay certain reports at their AGMs if such reports are to be produced on set dates potentially outside of their AGM window.
- Comparability and interaction of data may also be negatively affected if information sought to be used at a certain date is unavailable because, for example, the comparison date does not match the publication date set by the FRC.
- The potential timing mismatch may adversely affect how companies market themselves. Investment decisions are increasingly being based on non-financial criteria, such that corporate investors are not solely concerned with the prospect of financial returns, but also with how such returns are created and whether the creation process is sustainable, long term. Accordingly, companies are moving towards integrated reporting, whereby all corporate information – whether financial or non-financial – is published at the same time as the annual report, to assist investors with their decision making on issues ranging from capital allocation to voting at AGMs. The concern here is that some of the measures taken to implement the proposed new framework (such as requiring publication of reports on different dates), may cut across the above mentioned principle of integrated corporate reporting, with adverse effects on companies and stakeholders alike.
- There are also concerns that, if, like the annual report, a decade of public access to these reports is required, investors may find themselves overwhelmed rather than meaningfully informed by a complex and unwieldy library of information, contrary to the FRC's aims.

To address the foregoing, it may be helpful for the FRC to consider permitting, but not requiring, the reports in the network to be published on different dates.

2.7. Separately, the annual report is a company's opportunity to articulate its business' principal risks, uncertainties and opportunities. It shows why these risks and opportunities exist; how they inform its strategy and risk management process; and how measuring and managing these risks and opportunities are linked to performance metrics in executive remuneration. For the annual report to communicate any of the foregoing effectively, the company must undergo a quantitative and qualitative assessment of its financial and non-financial risks and opportunities, and these must include the full range of ESG considerations.

2.8. As such, we support the proposal to standardise non-financial reporting generally (although please note our comments on flexibility below), and in the short term, to combine some existing voluntary frameworks to create an outline of applicable regulatory standards. However, we recognise that until a common set of acknowledged metrics for non-financial reporting is actually created, a gap will remain, and comparability and standardisation of non-financial data will remain a challenge.

3. Scope of reporting and the liability regime

3.1. Any new corporate reporting regime would need to clarify what is meant by the terms "wider group of stakeholders", "public interest", and ensuing "obligations". It is not feasible for corporate reporters to accommodate the narrow interests or viewpoints of each and every stakeholder and potential stakeholder group. Accordingly, it would be useful to discuss an appropriate yardstick for determining the bounds of these terms in order to then determine what a company's "obligations" (if any) may be in relation to particular stakeholders. Also, some clear guidance (and illustrative examples) on who the FRC considers to be the primary audience for the core reports would significantly assist report preparers in making the judgement calls on materiality and content required of them. There are also concerns that the FRC is indirectly altering the company law principle of enlightened shareholder value and reinterpreting the related directors' duties by extending the scope of corporate stakeholders. The FRC may wish to bear this concern in mind. We suggest that – if indeed an alteration is the FRC's intention – such ought only to be effected by legislation.

3.2. Clearly the liability regime attaching to a new system of corporate reporting will be important. It is not clear from the discussion paper what is proposed in this regard, whether as a result of the network of reports (which, to the extent they are moved, would take some existing disclosures outside the current Companies Act safe harbour) or the proposed enlarged audience for corporate reports. Since information published online in the HTML format are not exactly formal documents, it is also not clear whether such publications fall within the scope of the network of reports, and the applicable liability regime for these. Easing the burden of exposure to potential claims would encourage corporate reporters to be more transparent and to engage more actively with an enlarged audience, as proposed. As such, a good starting point would be to extend the existing safe harbours for corporate reports to cover the entire network of reports, so that there is a single liability regime in respect of corporate reporting. (We note that this does not provide a solution for companies with overseas listings).

4. Flexibility and avoiding duplication

4.1. Since corporate reporters within the FRC's remit are by no means homogenous, it is imperative that companies retain flexibility in implementing any new reporting regime. Accordingly, we believe that any new framework that is ultimately adopted should be one which is not prescriptive, and which allows companies the flexibility they need to comply in a manner that best suits them and their stakeholders.

4.2. Linked to flexibility generally is a need for corporate reporters to understand how the network of reports will sit together. The aim of the new corporate reporting framework should be to facilitate the publication of clearer, shorter and focussed reports, rather than duplication of the same information across a range of different materials. The framework needs to be consistent with the need, and demand, for integrated reporting. As an example, ESG-related factors and reporting are relevant across a whole series of different areas and the importance of integrated reporting is growing, rather than receding. We have some concerns as to how a network of reports will avoid repetition and duplication of the same, or similar, material across a number of different reports or publications prepared on different dates. This is also linked to the concerns regarding undue burden mentioned above.

5. *Technology*

5.1. We acknowledge that the adoption of new technologies is a useful tool for enhancing stakeholder engagement with corporate reporting. At the same time, we believe that it is necessary for the FRC to consider, and seek to resolve, the challenges companies face with moving information online, especially narrative reporting as opposed to financial data, also taking into account companies with multiple listings and multi-jurisdictional regulators.

5.2. We also believe that care should be taken to ensure that, in harnessing technology for corporate reporting, technology does not itself dictate what is disclosed, but simply remains a tool to foster better disclosure and increased stakeholder engagement. For example, tagging information in XBRL presents a unique set of challenges to report preparers (even with financial reporting which is relatively clearer cut than non-financial reporting). Much of non-financial reporting is comprised of complex narrative disclosures which does not lend itself easily to tagging in the XBRL format. Requiring companies to allocate their disclosures to a reporting taxonomy may impact the effectiveness of their communication with their investors in cases where companies seek to avoid the disproportionate effort required to ensure an accurate allocation. Such a result would be detrimental to the stated aims for the new reporting framework.

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Annex II

GC100 Response to specific FRC consultation questions

Question 1: What are your views on our proposals as a whole? Are there elements that you prefer over others?

Please see our general comments in Annex I above.

Question 2: What do you see as the key practical challenges of implementing our proposals? Do you have any suggestions on how these could be overcome? What do you see as the costs and benefits of the new model?

Our general comments in Annex I above partially answer this question. Specific challenges include the absence of clarity as regards the scope and content for non-financial reporting. Also, the risk that the proposed system seems to foster an all year-round corporate reporting cycle prone to repetitive and duplicative reporting. Adopting the proposed framework would increase the burden on the already stretched resources of report preparers. We are also sceptical that the costs of moving from the existing system to a similar yet more complex system, as proposed, are justified.

Objective-driven

Question 3: Should corporate reporting focus on a wider group of stakeholders through multiple objective-driven reports, instead of a primary user-focused approach?

Annex I above (specifically section 3) outlines our key concerns here: the appropriate liability regime arising from such an extension. Without clarity in this area, companies are more likely to be defensive in their reporting, and the objective of clear communication will be lost. This would in turn affect stakeholders' perceptions of the reliability of such disclosures and may generally be counterproductive to the stated aims of the new system.

Account also needs to be taken of companies with multiple listings where any domestic legislative solution through a "safe harbour" will not be effective.

One set of principles

Question 4: Do you consider the set of principles (system level attributes, report level attributes and content communication principles) would be helpful in improving the quality of corporate reporting today and in the future?

We believe this is useful. However, clearly defining what is to be reported should be given priority if the quality of reporting – and engagement with such reporting – is to be improved.

Reporting network

Question 5: Do you agree with our proposals to improve the relevance and accessibility of information, involving more concise reports distributed across a reporting network?

Please see our general comments in Annex I above.

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Materiality

Question 6: We are proposing that there should no longer be a single test for materiality that is based on accounting standards but instead materiality will be dependent on the objective of a report. Do you agree with this approach, please explain why?

In making narrative regulatory disclosures, legal practitioners usually determine materiality with reference to the disclosure objective and the audience/recipients of such disclosure. Given its alignment with the aforementioned practice, we would broadly agree with the proposal to make materiality dependent on the objective of a report.

However, materiality, as currently proposed, is abstract. Accordingly, concerns exist that such an abstract concept could complicate the process of risk management and internal signoffs for report preparers. Thus, as mentioned in Annex I (section 3) above, it would be useful for the FRC to provide clear guidance on the primary audience for each (core) report, and consider how the proposed new system interacts and co-exists with other reporting obligations.

Non-financial reporting

Question 7: Do you believe that there is a need for regulatory standards for non-financial reporting? If so, what do you consider the scope of the information that should be covered by these standards?

Yes, and we welcome the move towards a global set of standards on non-financial reporting. However, we also believe that different business sectors have distinct pressures, and these necessarily influence the content and scope of information to be covered by such standards. As such, instead of fixed rules, the focus should be on arriving at clear and flexible principles or themes to which corporate reporters would respond, to allow and account for divergences in the context of each reporting company. While noting that this area would benefit from more legislative and regulatory intervention, we suggest that any resulting standard(s) should be such that assists listed companies in their compliance with overseas obligations in the same area, without increasing their compliance burden.

Question 8: Do you agree with the need for companies to provide information about how they view their obligations in respect of the public interest?

Please see our general comments in Annex I above (specifically section 3).

Question 9: Do you agree with the introduction of a Public Interest Report and the suggested content?

Please see our general comments in Annex I above.

Technology

Question 10: Do you see any other ways that current and new technology could be used to facilitate the proposed model, and support the system level attributes of corporate reporting identified above?

We recognise the potential to harness other media formats e.g. video, podcasts, in reaching stakeholders in their preferred mode of information consumption.

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While acknowledging that technological advances may improve the reporting system, we believe that it may be a more gradual process than is envisaged in the FRC's discussion paper, and ask the FRC to reflect on the points set out in Annex I above (specifically sections 5.1 and 5.2).

Proportionality

Question 11: Do you agree that the model we propose will achieve a proportionate reporting regime for companies of different sizes and complexity?

We do not believe that the discussion paper provides sufficient information by which the application of proportionality to the proposed corporate reporting model can be assessed.

Other

Question 12: What other areas do you see being necessary or relevant to the development of a model for corporate reporting that is fit for the future?

As outlined in Annex I (section 3) above, we believe that a corporate reporting model that is fit for the future should have a clear liability regime and be less prescriptive, so that companies remain flexible to comply in a manner that suits them best (although note also our comments on companies with multiple listings in Annex I (sections 2.4 and 5.1)).

Also, (as outlined in Annex I, sections 2.3 and 2.5), a future-proof corporate reporting model should take other disclosure regimes into account when imposing disclosure requirements to ensure that reporting is better and more efficient, and not just voluminous. Accordingly, where legal requirements exist over the same issue/area sought to be addressed by the corporate reporting model, it would be useful if the requirements imposed by the corporate reporting model either matched the existing legal requirements; or fostered legislative change to ensure such a match.
