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Chris Hodge  
Corporate Governance Unit  
Financial Reporting Council  
Fifth Floor  
Aldwych House  
71-91 Aldwych  
London WC2B 4HN

Dear Mr Hodge

**REVIEW OF THE EFFECTIVENESS OF THE COMBINED CODE**

The effectiveness of the Combined Code was debated by an audience of non executive directors, fund managers, professional advisors, the Quoted Companies Alliance and a representative from the London Stock Exchange on Thursday 21 May 2009. The NED Group - a networking group for non executive directors of listed, private, public sector and charitable companies – sponsored the debate.

We are the sponsors of the NED Group. John Collier is a Director of Clive & Stokes International, an executive search firm specialising in finding non executive directors for listed companies and Charles Russam is the founder of Russam GMS, a leading provider of interim executives.

The motion was:

*‘This House believes the Combined Code is no longer fit for purpose.....’*

In a narrowly contested and lively debate, the 50-strong audience, mainly drawn from directors with experience of smaller listed companies, agreed with the motion but by a very small margin.

There was firm agreement that the Combined Code is a good thing but it was felt that the financial crisis had clearly highlighted its deficiencies. Many believed that modification and amendment are needed.

What follows is a summary based on an analysis of a recording of the debate. Our aim in sending this letter to you is to give you a subjective impression of the main issues raised by a well informed group of non executive directors of mainly smaller companies.

We do *not* necessarily agree with all the points made.

### **General recommendations**

- Corporate governance should be given a higher priority in companies.
- Greater guidance for non executive directors is needed on the practical application of the principles of the Code.
- There should be a better and more effective way of ensuring the Code is correctly applied and enforced; there are currently no sanctions in place to deal with Boards that do not comply with the Code.
- Shareholder value should be key at all times; Boards need to engage more effectively with stakeholders and have shareholder needs at the forefront of all their dealings.
- Non executive directors must make sure the spirit as well as the letter of the Code is applied.
- Guidance is needed on the sort of explanations required where the Code is not being properly applied.

### **Risk management**

It was felt the Code lacks sufficient guidance on risk management. A number of specific ideas were raised:

- There should be greater guidance in the Code on the identification and handling of risk – perhaps by including the main provisions of the Turnbull report
- Boards need to communicate their company risks and their risk management processes more clearly to stakeholders
- There needs to be more transparent reporting of risk
- Non executive directors need to take more responsibility in ensuring that risk management processes are applied including, at the very least, an annual risk review
- Shareholders need to take on more responsibility – demanding more information about company risks and, if they are dissatisfied, they need to feed this dissatisfaction back to the Board
- There should be more guidance around what internal controls on risk management should be applied in companies
- Non executives should be more assertive in examining risk; they are an independent voice and can assess risk more accurately because of their objectivity
- Board needs to engage more effectively with employees to find out the true extent of the risks the business faces

### **Application of the Code**

- Stakeholders, including non executive directors and shareholders, should take more responsibility in ensuring that the principles of the Code are applied rigorously.

- There should be better processes in place to give shareholders a greater voice; company reports are published too late to give shareholders the information they need to affect decisions.
- The Code is too long; a shorter Code is needed which focuses on outcomes and shareholder engagement

### **Transparency**

- There needs to be more guidance on investor engagement
- Shareholders must not be passive in their approach and they should be prepared to demand greater transparency
- The investment community needs to play a greater part in ensuring shareholders are better connected with boards
- There needs to be a fresh look at reporting on what actually goes on in Board meetings

### **Board effectiveness**

- There should be processes in place to check the independence of directors
- The remuneration of directors needs to be covered in the Code; the practice of director rewards for a share price rise without also being held accountable if it drops needs to change
- The Code has failed to stop rewards for failure
- There should be a code of ethics for remuneration consultations
- The Code should provide more guidance on succession planning and board evaluation
- The Code should also give guidance on director training and access to information

The debating teams were led by George Dallas of Foreign & Colonial (for) and Graham Clayworth of accountants BDO Stoy Hayward (against). They were supported by Alexander Keepin of lawyers Charles Russell (for) and Barry Gamble, the former Chief Executive and Chairman of Fountains plc, who had the idea for the debate (against).

Yours sincerely



**JOHN COLLIER**



**CHARLES RUSSAM**