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Catherine Horton  
Financial Reporting Council  
8th Floor  
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28<sup>th</sup> February 2018

Dear Catherine

### **Response to FRC Consultation on UK Corporate Governance**

UBS Asset Management is a large-scale asset manager with a presence in 23 countries. We offer investment capabilities and investment styles across all major traditional and alternative asset classes to institutions, wholesale intermediaries and wealth management clients around the world. As of 31<sup>st</sup> December 2017 we managed approximately £589bn of assets on behalf of our clients on a global basis.

We have a strong regard for the principles of good stewardship and have a long history of building relationships with our investee companies, particularly in the UK where we appointed our first dedicated corporate governance director in 1996 and became signatories to the UK Stewardship Code upon its launch in 2010. We invest in companies for the long-term and are keen to ensure that companies are well governed and able to produce sustainable performance.

Your recently undertook a wide ranging review into the structure, content and balance of the UK Corporate Governance Code and invited comments on the intended revisions.

Having discussed the changes with the Investment Association we are broadly supportive of their intended response to the revisions, which represent the aggregated views of many market participants.

However, we have additionally outlined some specific comments below for inclusion as part of your consultation. In this response we have focused specifically on the intended changes to the UK Corporate Governance Code and not the questions in the consultation related to the UK Stewardship Code.

### **Governance Code provisions**

We expect board members of companies in which we have invested to act in the service of all stakeholders, view themselves as stewards of the company, exercise good judgment and practice diligent oversight of the management of the company.

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Overall, we believe that the UK Corporate Governance model remains among the strongest worldwide, has generally served investors well since its introduction and that it should remain principle-based and be focused on the relationship between UK corporations, their boards, and other stakeholders.

At the same time, as outlined in your executive summary, we appreciate that a number of companies have experienced governance failures that have undermined trust and confidence in business. It is crucial for the UK that steps are taken to strengthen public opinion and in particular address concerns related to the alignment between executive pay, company performance and employees, the contribution of companies to wider society and lack of diversity at board and senior management level.

The shorter, more focused code is welcome and we are pleased that the FRC has recognised and retained the key strengths of the UK's approach, in the unitary board, strong shareholder rights, and flexibility through a 'comply or explain' approach.

### **Specific questions related to Code changes**

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

We do not have specific concerns, the effective date appears appropriate.

#### **Q2. Do you have any comments on the revised Guidance?**

We are concerned that moving certain provisions from the Code to Guidance may weaken specific aspects of board practice if regarded purely as guidance. These mainly relate to the division of responsibilities, including:

- *Code: The Board should meet sufficiently regularly to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision.* We regard this as a requirement of board operation and not simply guidance.
- *Code: The senior independent director should be available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or other executive directors has failed to resolve or for which such contact is inappropriate.* If engagement is to be effective then we expect this provision to remain as a requirement.

We have a further concern relating to the removal of the clause regarding when shareholder meeting announcements are made. There are potential unintended consequences in removing this clause, with shorter timeframes available for investors to consider the agenda, given the difference between 'working days' in the Code and 21 'general' days as per the Companies Act. It is our preference that this clause is not removed and should remain in the Provisions.

#### **Q3. Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?**

We share the revised Code's view that in order to deliver sustainable long-term returns to its shareholders the Board must also take into account the impact of the Company's strategy on a wider audience of stakeholders. The approach to Provision 3 appears to be focused mainly on engaging with the workforce, which is just one component of the wide range of stakeholders which corporations liaise with on a regular basis. We share the Investment Association opinion that current directors' duties are appropriately drafted in law and that they support the needs of investors as they already require directors to take into account the interests of employees, customers, suppliers, the community, and the environment.

We are supportive of the flexible approach a company can take to stakeholder engagement but do not feel that the methods prescribed will fit the requirements of all companies and that an explanatory approach may be necessary for some companies.

**Q4. Do you consider that we should include more specific reference to the UN SDGs or other NGO principles, either in the Code or in the Guidance?**

At this stage, we would prefer that the revisions are focused on setting best practice on Governance for UK listed institutions, with future updates to the Code or Guidance to follow as appropriate.

**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?**

Yes, we agree that this threshold is appropriate and would expect that companies receiving such a high percentage vote seek engagement with investors and provide a final summary in the next annual report, or explanatory notes to resolutions at the next shareholder meeting.

**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? If not, please provide information relating to the potential costs and other burdens involved.**

We broadly support the removal of exemptions for smaller companies, but we consider that it is important to stress that the requirements under Provision 11 should be assessed in a 'comply or explain' framework, so as not to penalise those smaller companies which opt not to fully comply with the Code. In some cases, it should be left to the judgment of the board of smaller companies for which it might be suitable to adopt alternative arrangements to those listed in the Code.

**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 support the change to the wording of Provision 15 (independence of non-executive directors), which in our view clarifies the process under which non-executive directors are assessed as being independent or not as well as eliminating the subjective assessment by boards which has not enabled investors to make a clear judgement on director independence.

**Q8. Do you agree that it is not necessary to provide for a maximum period of tenure?**

Company boards require a balance of skill, knowledge and experience and we are not supportive of a maximum overall period of service.

**Q9. Do you agree that the overall changes proposed in Section 3 of revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole?**

We strongly support and welcome the focus in the draft Code on diversity at board level, as well as beyond the board at management level. While appointments should be based on merit and focused upon the experience of the appointee, improving diversity of both gender and background will help to ensure that boards and companies in general have a balance and pipeline of competence, skills, experiences and strengths.

**Q10. Do you agree with extending the Hampton-Alexander recommendation beyond the FTSE 350? If not, please provide information relating to the potential costs and other burdens involved.**

While we agree that extending the recommendations beyond the constituents of the FTSE350 is desirable, we would recommend that a specific review be performed of the potential impacts before finalising in the Code provisions.

**Q11. What are your views on encouraging companies to report on levels of ethnicity in executive pipelines? Please provide information relating to the practical implications, potential costs and other burdens involved, and to which companies it should apply.**

Where practical, it would be beneficial for investors to understand how companies are addressing ethnicity in the executive pipeline. However, we are mindful of the challenges in doing so and as with Q10 would encourage the FRC to undertake a review of the impacts prior to finalising any provision.

**Q12. Do you agree with retaining the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or Companies Act?**

We see no detriment to retaining the requirements in the Code and agree that this is the best course of action.

**Q13. Do you support the removal to the Guidance of the requirement currently retained in C.3.3 of the current Code? If not, please give reasons.**

We have no objections to moving provision C.3.3 (terms of reference of the Audit Committee) under the Guidance, shifting the focus of the revised Code on setting key principles, as long as the main roles and responsibilities of the audit committee are clear and these are set out in new Provision 25.

**Q14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?**

We are broadly supportive of the Investment Association Principles of Remuneration, which outlines that companies justify pay outcomes against specific reference points.

In that context, we generally support the amendments in the revised Code concerning executive compensation, including the length of board experience required in order to be appointed as Chair of the remuneration committee.

We share the view that executive pay should be aligned with the company's purpose, strategy and value and that the remuneration committee should exercise discretion when necessary to avoid formulaic pay outcomes which are not in alignment with company performance.

However, we have some concerns regarding what appears to be the intention to widen the scope of responsibility of the remuneration committee to include oversight of pay at all levels of the workforce and of all workforce policies. We would like to see further clarification on this topic.

**Q15. Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?**

We believe the Code should concentrate on the governance of executive pay and avoid micro-managing a company's executive pay, to reduce the risk of the Code becoming overly prescriptive and promoting a 'one-size fits all' approach and to prevent the Code becoming outdated as practices change.

The Investment Association's Principles of Executive Remuneration outline investor expectations and is annually reviewed to reflect changes to market practice.

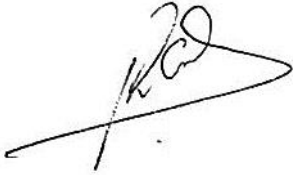
**Q16. Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?**

We strongly believe that committees should exercise meaningful discretion in situations where the outcomes of executive remuneration are clearly not in line with company performance, or result in egregious awards.

Remuneration committees already have the option to exercise such discretion, but in practice rarely do so. It is unclear to us whether the changes will bring about meaningful change in this regard.

Should you require any further information or clarification please do not hesitate to contact us to arrange a follow up discussion.

Yours faithfully

A handwritten signature in black ink, appearing to be 'P. Clark', written over a horizontal line.

Paul Clark  
Head, Corporate Governance