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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,

***Re: Review of the effectiveness of the Combined Code – Call for evidence March 2009***

I am writing in response to the call for evidence for the current review of the effectiveness of the Combined Code.

We have considered the four main questions set out in the review documents and our responses can be found in the attached document.

I hope that this will be helpful in your review of the Code. If you have any questions, do not hesitate to contact Dominic Platt ([dominic.platt@cw.com](mailto:dominic.platt@cw.com)) in the first instance.

Yours sincerely,

## REVIEW OF THE EFFECTIVENESS OF THE COMBINED CODE

### CABLE AND WIRELESS PLC COMMENTS

APRIL 2009

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***Q1: Which parts of the Code have worked well? Do any of them need further reinforcement?***

A1: We believe that underlying spirit of the Code – that it is not a rigid set of rules – underpins its general success to date. As outlined in the preamble to the Code, ‘while it is expected that companies will comply wholly or substantially with its provisions, it is recognised that non-compliance may be justified in particular circumstances if good governance can be achieved by other means’. As the Code goes on to say, to the extent a company does not comply, the company needs to explain why and if appropriate discuss with shareholders. It is this underlying spirit that needs constant reinforcement, particularly in the face of an increasing trend among some of those monitoring companies and the Combined Code (eg institutions’ compliance officers and/or voting advisory bodies) to make changes to the way in which the Code is interpreted, developing a multitude of parallel rules that they wish to apply. To address this trend, we believe it would be timely to reinforce the original underlying spirit of the Code and clarify (i) who owns the Code and has the right to interpret and issue guidance on it - we understand this is the FRC - and (ii) how it applies to companies and shareholders.

Related to this, we would support reinforcement of the principle on evaluation of Governance Disclosures which encourages institutional shareholders to ‘be prepared to enter into a dialogue if they do not accept the company’s position’ and that they ‘should avoid a box-ticking approach to assessing a company’s corporate governance’. More and more we find that some institutions’ compliance departments are applying a box-ticking approach which runs contrary to the spirit of this principle of the Code. It seems to reflect a trend to construct a one-size-fits-all approach to governance rather than an approach which seeks to understand and appreciate the circumstances in a particular company. This does not engender positive company/shareholder relations.

We support the Code’s principle on channels of communication between a company and its shareholders, with a senior independent director being available to shareholders if they have concerns which contact through the normal channels of chairman, chief executive or finance director has failed to resolve or for which such contact is inappropriate. We believe this works well and should be reinforced, particularly in the light of some groups recommending that shareholders should engage, for example, directly with a company’s audit committee and/or its auditor. We believe such developments would inevitably lead to confusion between the roles of executive and non-executive directors. We believe that non-executive directors would compromise their supervising role if they were to be drawn into being part of the executive control mechanisms of the company.

**Q2: Have any parts of the Code inadvertently reduced the effectiveness of the Board?**

A2: [We have no comments on this question.]

**Q3: Are there any aspects of good governance practice not currently addressed by the Code or its related guidance that should be?**

A3: There is a danger that reporting on corporate governance simply becomes a checklist repeating the principles of the Combined Code without providing any sense as to how effectively that governance actually operates within a company. To address this, three years ago we introduced a report by the senior independent director which we include as part of our annual corporate governance report in the Annual Report and Accounts and which is specifically addressed at our Annual General Meeting. We have found this report to be very useful in providing additional flavour and comment on the way corporate governance operates at Cable & Wireless. In effect, we report on behaviours within the top team.

**Q4: Is the 'comply or explain' mechanism operating effectively and, if not, how might its operation be improved? Views are invited on the usefulness of company disclosures and the quantity and quality of engagement by investors.**

A4: We believe that the 'comply or explain' mechanism is good. We would support the development of this to 'apply or explain' as suggested by Sir Derek Higgs in his post-report thinking and as adapted in the Dutch equivalent of the Code. As Sir Derek Higgs has said, "apply or explain" is better than "comply or explain," because "comply" connotes some regulatory compliance or rule where there is none. While a subtle change, we believe this change would underpin the Code as a set of principles as opposed to a set of rules, which some seek to characterise them as.

We do however have a problem with "comply or explain" being a one-sided demand on companies. Individual investing institutions are allowed to set their own agendas relative to the Code and behaviours sometimes suggest this is for competitive advantage in demonstrating how active they are. Media interest will always focus on the institutional outliers when it comes to a vote and a statement making it clear that AGM roles are intended to seek majority rather than unanimity would be useful in the Code.

In response to your request for views on the usefulness of company disclosures, we would refer you to our answer to question 3 above on our senior independent director report.

In response to your request for view on the quantity and quality of engagement by investors, we would highlight the increasing trend we refer to in our discussion and suggestion on question 1 above concerning institutions'

compliance departments increasing trend to apply a box-ticking approach to their reviews of companies' corporate governance.