ST. JAMES'S PLACE
WEALTH MANAGEMENT

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By Email only

28 February 2018

Dear Ms Horton

Response to FRC consultation re Review of the UK Corporate Governance Code (the "Code")

I am writing on behalf of St. James's Place plc to respond to your consultation on proposed revisions to the UK Corporate Governance Code published in December 2017.

By way of background, St. James's Place plc is a FTSE100 company managing and advising on circa £90.7bn of assets for around 550,000 clients, via our team of circa 3,661 authorised advisers.

As a FTSE100 company operating in the highly regulated financial services sector, we must comply with exacting legal and corporate governance requirements but we are only too aware that rules and regulations alone will not provide stakeholders with the necessary assurances. As the volume of new regulation and legislation shows no signs of reducing, your focus on making the Code more clear and concise is welcome and, given the broad nature of stewardship, we believe the same approach would benefit users of the Stewardship Code. As recent signatories to the Stewardship Code, we have demonstrated our support of its aim of enhancing engagement between companies and investors, but we believe that including more specific requirements is likely to make adherence increasingly complicated. It will also make comparison against other signatories more difficult, as organisations are at different stages of development and view stewardship in a variety of ways.

In our view, the UK government has used legislation and "comply or explain" codes to drive a high level of corporate governance but as both codes have developed, other regulatory requirements have also increased. At the same time, the approaches adopted by influential users of company reports, including institutional voting agencies, have tended towards box-ticking meaning that companies have become more boilerplate in their reporting, to ensure compliance. The shorter and sharper structure of the revised Code will hopefully lead companies to move away from generic statements of compliance and deliver relevant and helpful information that informs the reader of their position.

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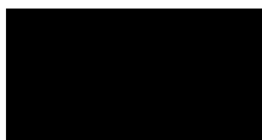
As an organisation, we put a high degree of emphasis on our culture, which is underpinned by our collective desire to "do the right thing" for all of our respective stakeholders. However, we recognise that society has many complex demands on business, and the expectations of different stakeholders will sometimes conflict, meaning that meeting the desires of individual stakeholders may not always be met. It is therefore essential that the Code continues to provide a framework that enables boards to set out their purpose and explain when compliance is not straightforward or proportionate. The inclusion of some of the more procedural suggestions is not entirely consistent with the aim of making the Code "shorter and sharper" and focused on the high-level Principles and this may result in companies (and those assessing them) adopting a compliance-led approach. Consequently, we would encourage the FRC to avoid making changes that make the Code more prescriptive unless the benefits are clear and demonstrable. The FRC's use of supporting guidance and publishing good and bad practice (e.g. via the Financial Reporting Lab) for both the Code and the Stewardship Code, should be used to encourage more meaningful reporting set in context.

As both a listed public company and a wealth manager we are well placed to understand the need to meet the expectations of investors and also to understand the role of our fund managers as stewards of our clients' investments. However, as an organisation with a number of regulated financial services companies, we are only too aware that overly prescriptive regulatory requirements can stifle the quality of reporting.

Our responses (set out in Appendix A) to the questions set by the consultation reflect the above and particularly our belief that the existing corporate governance framework, based upon a unitary board model, remains suitably robust. In our responses to questions on both the Code and the Stewardship Code, we have highlighted both where supporting guidance can contribute to better practices and areas where we are concerned that introducing more prescriptive solutions to issues of assurance has the potential to unintentionally weaken relationships between companies and stakeholders which have been, and should be, built on trust.

Yours sincerely



Liz Kelly
Company Secretary

Appendix A

UK Corporate Governance Code and Guidance on Board Effectiveness Questions

Question 1: Do you have any concerns in relation to the proposed Code application date?

We do not have any concerns in relation to the proposed Code application date.

Question 2: Do you have any comments on the revised Guidance?

On the whole, we are supportive of the proposed changes but would highlight the concerns we have set out in our response to Question 3, in relation to the mechanisms for workforce engagement.

Question 3: Do you agree that the proposed methods in Provision 3 are sufficient to achieve meaningful engagement?

We are supportive of the inclusion of a provision heightening the importance of workforce engagement and recognise that a workforce advisory panel could provide a useful adjunct to the other methods of engagement we already employ. However, we believe that the appointment of an employee from the workforce or the designation of a "workforce" non-executive director would not be in keeping with the premise of a unitary board, upon which the UK's corporate governance framework is based. Directors have a duty (s.172 of the Companies Act 2006) to take account of the interests of all stakeholders, including employees. It is already incumbent on all directors to comply with s.172 and vesting responsibility for stakeholder engagement in a single representative on a board is unlikely to have a meaningful effect as the board as a whole should be considering the implications for the wider stakeholder base.

Appointing an employee representative to a board also risks exposing that individual to legal and regulatory responsibilities for which they may not be appropriately qualified (not least in financial services where directors have to be approved by the Regulators). Cases in practice have highlighted that conflicts can arise where the workforce expect their appointed representatives on boards to communicate confidential information to them. This could put representative directors under undue pressure and also risks compromising their position in their day to day role. Selecting employee representative could also prove difficult as those with the broadest view of the organisation may be members of the senior management team and they are unlikely to be considered to be far enough removed from the board's influence.

Question 4: 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?

Although reporting against principles, such as the UN's Strategic Development Goals, can provide a meaningful reference point for all stakeholders, it is important that reporting is relevant and proportionate to individual businesses. Mandating reporting for businesses where there is limited impact would be overly prescriptive, leading to reports containing boilerplate wording that adds little and makes the reports more difficult to navigate. The inclusion of additional reporting requirements could result in unequitable comparison by the institutional investor bodies that lean towards a box ticking approach to assessing compliance with the Code. Therefore, any reference to NGO principles, if included, would be better placed in the Guidance.

Question 5: Do you agree that 20 per cent is 'significant' and that an update should be published non later than six months after the vote?

We note that 20% has already been used a measure of significance when determining what constitutes "shareholder dissent" for the purposes of the Investment Association's new Public Register of Shareholder Dissent. Company law already sets out the thresholds for gaining approval from investors via Ordinary and Special Resolutions and introducing a further measure, which has no binding impact on the passing of Resolutions, could bring into question the relevance of that legal framework and undermine the validity of authorities granted by shareholders. Consideration should be given to aligning the level of significance to the minimum votes required (i.e. 50% for Ordinary Resolutions and 75% for Special Resolutions) so as to avoid creating an arbitrary measure that does not align with the established legal basis for shareholder voting. The proposal to use 20% of votes cast also fails to take account of shareholder turnout and consideration should be given as to whether the measure of significance should also take account of the percentage of the register that exercises their right to vote at a meeting (including votes withheld).

Requiring a company to explain what action it intends to take on the day it announces its AGM results would provide boards with limited time to actually consider the most appropriate course of action. Similarly, requiring an update within six months introduces an arbitrary deadline when the circumstances for responding to shareholder dissent may take considerably longer to understand and act upon. Taking board composition as an example, it may take much longer to introduce succession plans designed to facilitate change and boards should not be rushed into taking action that could potentially destabilise its operation. Greater clarity should also be provided as to the proposed means of publishing such updates and exactly what needs to be published. If the proposed change envisaged announcing such information to the stock exchange it could set a new precedent for the level of detail being disclosed as "regulatory news".

Question 6: 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.

Although the question is not directly relevant to St. James's Place plc, we do recognise that when done well, and with the right intent, an independent board evaluation can provide a great deal of value. However, mandating triennial evaluations may have resulted in any boards not supportive of the approach, seeing it as a box ticking exercise and in such cases the value is questionable. A number of reputable providers exist in the market but there is no means of assuring quality and value-add as practitioners are not subject to any form of registration or monitoring. There is no direct correlation between cost and value and so focus should be on providing boards and investors with assurance that independent providers are adding value.

Question 7: Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

We do not agree and believe that assessing independence on length of tenure alone is in itself questionable and would exclude highly experienced directors who are more than capable of maintaining their independence regardless of tenure. The nine year period has its origins in earlier versions of the Code and restrictions set out in companies' articles of association. But for FTSE350 companies, directors (including the chair) no longer rely on a three year term following election and are required to stand for annual re-election. This provides a mechanism for shareholders concerned about independence to exercise their views and powers via their votes at AGMs.

Whilst refreshment of a board has an important part to play in maintaining independent challenge and avoiding boards becoming stale, this needs to be balanced against the importance of having knowledge of the business and continuity of experience. Planning for succession is a challenging task for large and complex organisations, and extending the ongoing assessment of independence to the chair is likely to have a significant impact. We are not clear what evidence exists to support the benefits of this change. In our view this change is not necessary and the consequences would be significant. While the chair must be independent on appointment, the candidates would usually benefit from a period of acclimatisation as NEDs before taking the chair, or existing NEDs will step up to take the role having already spent time with the company. A nine year limit on a chair would consequently result in reducing the time for a NED on the board subsequently appointed as chair could continue in the chair role. It is also likely to restrict the options available in the event there is an unforeseen need to change the chair.

This question, and the consultation as a whole, does not consider the fundamental question of whether the chair can, in practice, be considered independent at any time, after appointment. The nature and duties of the role (which includes fostering relationships with all members of the board, in particular the CEO) come with significant time commitments which in themselves bring into question whether the chair can be independent. Before setting a measure of independence for a chair, we would suggest that consideration is first given as to whether independence can be maintained by a chair and whether this is necessary given the requirement that at least half the board has to be independent.

Question 8: Do you agree that it is not necessary to provide for a maximum period of tenure?

As intimated in our response to question 7, we do not believe a hard limit is necessary and the inclusion of a requirement to explain plans for succession beyond a prescribed period of tenure may provide a more meaningful means of ensuring that directors do not outstay their welcome. We believe that by imposing a maximum period and removing a company's ability to explain why it believes a director remains independent even if on a board from more than nine years, is far less compelling. We recognise that it would not prohibit a company from explaining why they believe it is appropriate for less than 50% of a board to be independent but current experience suggests that many institutional investor bodies will recommend a vote against the board and individual directors, regardless of any explanation given, which undermines the UK's commitment to the "comply or explain" concept. Evidence for the necessity of change has not been provided and consequently, we believe retaining the existing approach would be more appropriate.

Question 9: 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 are clear that a diverse and inclusive community at board level and throughout organisations, will make businesses stronger and drive continued growth and innovation. Consequently, we support the emphasis on developing a diverse pipeline for succession at board and senior management levels and acknowledge that reporting on progress is an important means of providing stakeholders with assurance that this is happening.

Question 10: 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.

The FTSE350 is often seen as a barometer of the broader corporate environment but if a lack of gender diversity is an issue across the UK, it will not be resolved by limiting application to a select

group of companies. As a FTSE100 company we are not best placed to comment on the potential costs.

Question 11: 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.

As stated in our answer to Question 9, we are clear that a diverse and inclusive community at board levels and throughout organisations, will make businesses stronger and drive continued growth and innovation. The nature and required content of any reporting would need to be carefully considered. In particular this would need to be set against the geography of the workforce, as whilst men and women are equally distributed both across the UK and globally, other measures of diversity can throw up national, regional and local differences. Multi-national companies with global footprints are likely to be more ethnically, culturally and religiously diverse than companies operating principally in a single country or region. If reporting was to be required, the basis set would need to ensure that companies are measured against the demographics of the locations in which they operate and not against national/international statistics. Further, the organisation's own industry is also important context. We would expect the additional costs and burdens of reporting to depend largely on the extent to which each company is required to source the requisite data and comparative data sets.

Question 12: 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?

Where duplications exist, an assessment should be made as to whether it is necessary to retain both rules. As long as requirements are entirely consistent this should not give cause for concern but where there are differences in language, no matter how subtle, there is a risk that requirements will conflict with each other. This will create confusion and result in inconsistent applications and as such, where duplication is unnecessary, it should be removed.

Question 13: 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.

While the requirement to publicly disclose the Audit Committee's terms of reference has been a provision of the Code to date, it is seen by most as best practice and in keeping with the spirit of open and transparent disclosure to stakeholders. Although there is no guarantee that companies will continue to comply, it is unlikely many companies will seek to remove their terms of reference from their websites and those that do are likely to be viewed suspiciously by stakeholders.

Question 14: 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?

The Code already provided in Provision D.1 that the remuneration committee should be sensitive to pay and employment conditions elsewhere in the group and we recognise that it is important for decisions about executive remuneration to be taken having given due regard to pay across the group. Directors have a statutory duty to take account of the interests of all stakeholders (including employees) and will consider employee remuneration when the board approves budgets and business plans. Remuneration committees already have a heavy load, particularly with the current focus on executive remuneration, and will have their work cut out determining and operating executive remuneration structures. The additional burden of monitoring all company and

workplace remuneration policies and practices could prove excessive, particularly for larger companies and those with complex employee structures.

Question 15: Can you suggest other ways in which the Code could support executive remuneration that drives long-term sustainable performance?

We believe that remuneration committees should review and approve the remuneration policy that applies to employees but the policies around recruitment, retention, promotion, etc,,, should be left to the executive team. The additional executive remuneration reporting requirements and responsibilities appear to reflect what is becoming more standard practice. Consideration should also be given to the extent of any overlap with the Nomination Committee, which has a significant role to play in recruiting new executives and overseeing executive succession.

The combination of the suggestions made in relation to Question 14 above (in relation to remuneration committees revising and approving employee policies) and the enhanced reporting requirements should be sufficient to achieve this aim.

Question 16: Do you think the changes proposed will give meaningful impetus to boards in exercising discretion?

There is a strong check and balance in this respect as shareholders are able to vote against the remuneration report and the chair of the remuneration committee if they do not believe that this discretion has been exercised appropriately. Should significant votes against be received, the board would then be required to take action and revisit how they apply/applied discretion.

UK Stewardship Code Questions

Question 17: Should the Stewardship Code be more explicit about the expectations of those investing directly or indirectly and those advising them? Would separate codes or enhanced separate guidance for different categories of the investment chain help drive best practice?

We would not support splitting the code up into those that invest directly and indirectly as introducing another code would make it more complex for users to compare signatories' statements and could represent a further hurdle for new signatories to overcome. We would however support the FRC providing separate guidance for different categories of the investment chain, for example asset owners and asset managers. We would also support publication of best and weaker practice, as the FRC has done with its Financial Reporting Lab as this provides a basis against which organisations can assess the quality of their approaches.

Question 18: Should the Stewardship Code focus on best practice expectations using a more traditional 'comply or explain' format? If so, are there any areas in which this would not be appropriate? How might we go about determining what best practice is?

We would not support the adoption of a 'comply or explain' format with a focus as specific as that in the UK Corporate Governance Code. However, we recognise that it could be beneficial to require signatories to explain where their practices depart materially from the Stewardship Code. While there may be many 'best practice' examples, there are many dimensions to stewardship and companies may approach it differently. Adopting a prescriptive measure of what is deemed 'best practice' would ignore the different ways in which organisations discharge their responsibilities and the subjective nature of stewardship, making it harder to compare against other signatories.

<u>Question 19:</u> **Are there alternative ways in which the FRC could highlight best practice reporting other than the tiering exercise as it was undertaken in 2016?**

We have referred to the Financial Reporting Labs above and, would also highlight the United Nations Principles for Responsible Investment's production of a 'best practice' annual report, which highlights some of the better aspects of reports prepared by signatories each year. This could also offer guidance for those deemed 'less advanced' and incentivise signatories to improve so they could feature in the report.

We are comfortable with the tiering exercise that was carried out in 2016 and recognise that it has contributed not only to the quality of reporting but also the Stewardship Code's standing and reputation. We would encourage the FRC to maintain the tiering approach.

<u>Question 20:</u> **Are there elements of the revised UK Corporate Governance Code that we should mirror in the Stewardship Code?**

We would support keeping the Stewardship Code's scope broad without focusing too heavily on specific activities as the relevance of individual activities could vary materially between signatories. Stewardship is not just about governance and it is important that the Stewardship Code remains broad so that it can encompass all of facets associated with stewardship.

<u>Question 21:</u> **How could an investor's role in building a company's long-term success be further encouraged through the Stewardship Code?**

We don't have strong views on this matter and thus have decided not to comment.

<u>Question 22:</u> **Would it be appropriate to incorporate 'wider stakeholders' into the areas of suggested focus for monitoring and engagement by investors? Should the Stewardship Code more explicitly refer to ESG factors and broader social impact? If so, how should these be integrated and are there any specific areas of focus that should be addressed?**

We support promoting sustainability (including ESG factors) more broadly within the code, but the FRC should be mindful of the potential for scope creep if provisions become too prescriptive and the consequent impact on the Stewardship Code's clarity. It is important to acknowledge that organisations adopt different approaches to sustainability and being too specific could hamper the quality of the statements and their usefulness to users.

<u>Question 23:</u> **How can the Stewardship Code encourage reporting on the way in which stewardship activities have been carried out? Are there ways in which the FRC or others could encourage this reporting, even if the encouragement falls outside of the Stewardship Code?**

The Investment Association's Stewardship Reporting Framework provides a good example of guidance to signatories on examples of reporting. As mentioned elsewhere, considering could also be given to using workshops similar to the FRC's Financial Reporting Labs to help identify and publicise examples of best practice, although specifically highlighting individual incidences of poorer practice should be avoided as this would border on public censure.

<u>Question 24:</u> **How could the Stewardship Code take account of some investors' wider view of responsible investment?**

Please see our response to Questions 22 and 23.

<u>Question 25:</u> Are there elements of international stewardship codes that should be included in the Stewardship Code?

We don't have strong views on this matter and thus have decided not to comment.

<u>Question 26:</u> What role should independent assurance play in revisions to the Stewardship Code? Are there ways in which independent assurance could be made more useful and effective?

We do not support the view independent assurance should play a role in the Stewardship Code. Independent assurance has a part to play when then there is a need to demonstrate that controls and processes are in place and operating effectively but effective stewardship is achieved in many different ways and a clear basis upon which to assess effectiveness does not exist. Consequently, the value of independent assurance is likely to be limited at best at the present time as the nature of what is being tested is extremely subjective. Introducing requirements to require independent assurance would also introduce a further barrier that could contribute to an organisation's decision not to sign up.

<u>Question 27:</u> Would it be appropriate for the Stewardship Code to support disclosure of the approach to directed voting in pooled funds?

The ability of investors to influence voting increases in complexity for every step they are removed from direct ownership. Establishing a workable means of directing voting for pooled funds across the globe, operating in different regimes, and under the management of very different firms will be extremely challenging and could discourage firms from signing up to the code. Consequently, we do not believe including further requirements in the Stewardship Code at this time would be appropriate. However, this could be a good example of an area where the FRC may choose to encourage further reporting by signatories, if it is applicable to them (see answer to question 23).

<u>Question 28:</u> Should board and executive pipeline diversity be included as an explicit expectation of investor engagement?

UK corporate governance requirements already address diversity requirements for UK issuers. As stated throughout our responses, great care should be taken to avoid making the Stewardship Code too prescriptive and this is an example where cultural and societal differences, in addition to existing sector biases, will make it difficult to achieve meaningful and consistent reporting that would benefit readers.

<u>Question 29:</u> Should the Stewardship Code explicitly request that investors give consideration to company performance and reporting on adapting to climate change?

We don't believe the FRC should single out specific issuers and investors should engage with companies on issues that are materially relevant to that specific company. The Stewardship Code should remain broad and not highlight individual issues.

<u>Question 30:</u> Should signatories to the Stewardship Code define the purpose of stewardship with respect to the role of their organisation and specific investment or other activities?

The enlightened shareholder value concept which underpins the directors' duty to promote the success of the company was codified in the Companies Act 2006. This duty requires the directors to have regard to a non-exhaustive list of factors that should underpin all decisions, whether in

relations to specific investment activities, or not. This purpose should be aligned with the purpose of the organisation and we do not believe additional disclosure is required.

Question 31: Should the Stewardship Code require asset managers to disclose a fund's purpose and its specific approach to stewardship, and report against these approaches at a fund level? How might this best be achieved?

Requiring asset managers to disclose the purpose and specific approach to stewardship at a fund level would add significant administrative burden to asset managers. This is likely to impact on the quality of statements, particularly where asset managers are required to prepare different statements across a large range of funds. When considering additional requirements that require more granular reporting, the FRC needs to consider the desired balance between: encouraging improvements in practices and reporting; and establishing prescriptive requirements that could be a barrier to many possible signatories and result in boiler plate reporting.