

Email – Janus Henderson Investors

30 January 2018

Janus Henderson is a leading global active asset manager dedicated to helping investors achieve long-term financial goals through a broad range of investment solutions, including equities, quantitative equities, fixed income, multi-asset and alternative asset class strategies.

Janus Henderson has approximately US\$345 billion in assets under management (as at 30 June 2017), more than 2,000 employees and offices in 27 cities worldwide. Headquartered in London, the company is listed on the New York Stock Exchange (NYSE) and the Australian Securities Exchange (ASX).

Janus Henderson's oldest business is its Investment Trust business which consists of 14 investment companies, two of which, The City of London Investment trust plc and The Bankers Investment Trust PLC, are constituents of the FTSE 350 Index. Each of the Janus Henderson managed investment trusts have a wholly independent board of directors and Janus Henderson provides investment management and administration services under the terms of a management agreement that can be terminated by either party under certain conditions.

Each of our client boards has adopted the Association of Investment Companies (AIC) Code on Corporate Governance. As you will be aware, it has been endorsed by the Financial Reporting Council as an alternative means for the boards of investment companies to meet their obligations in relation to the UK Corporate Governance Code. Compliance with this Code is a matter for the boards of those companies and not Janus Henderson; however, Janus Henderson provides its client boards with a briefing on corporate governance and best practice and I therefore have a direct interest in the proposed revisions to the UK Corporate Governance Code. The AIC obviously also has a direct interest and will no doubt also be responding to your consultation.

From my perspective as Janus Henderson's Director and Head of Investment Trusts, I only have comments on one of your questions as set out below:

Q7 Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?

Janus Henderson opposes this change in relation to the impact it has on Chairs as it effectively limits every directors' tenure to nine years from the date that they are appointed to the board. Whilst some directors are recruited to be the Chair of the company, it is much more common for a new Chair to be selected from amongst existing members of the board. It is key that the Chair has the right level of knowledge and experience to lead the board and having spent time as a non-executive director can contribute significantly to making that director prepared and ready to effectively lead the board. Consequently, it is not unusual for a director of an investment company to succeed to the Chair after having served some years on the board. Your proposal would mean that the director would only be able to serve for a short time before their nine years was up. I would suggest that this is neither in the best interests of shareholders nor contributing to the effective operation of boards. In my experience, directors who have succeeded to the Chair become no less independent after nine years on the board and they are in any case subject to regular challenge through the annual board evaluations.

Janus Henderson's current briefing on this issue to our client boards is as follows and I commend it to you as something that both effectively manages tenure but also ensures that existing directors who have developed the right level of knowledge and experience to lead the board are able to make a contribution in that new role beyond the nine year limit but no longer than two terms of three years.

1. No director should ordinarily serve longer than nine years, being three terms of three years. In exceptional circumstances, such as a major corporate action or the loss of other directors, a director may serve an extra year to see through that action or the appointment of new directors.
2. A director who is appointed Chairman immediately or within three years of appointment may serve a maximum of nine years as Chairman, being three terms of three years.
3. A director who is appointed Chairman after three years of service and prior to the completion of nine years may serve a maximum of a further six years, being two terms of three years.
4. A director should not be appointed Chairman after the completion of nine years of service but should instead retire. Should the appointment be necessary for whatever reason, then that director would only serve one three year term.

If, following this consultation process, you decide that change in this area is necessary, then Janus Henderson recommends that there should be an initial period of 4/5 years to allow Boards to adapt to the updated Code. Relying on your principle of "comply or explain" is not enough in this case because a lot of investors have developed a tick box mentality.

In conclusion, Janus Henderson urges the FRC to reconsider this proposed new time restriction and amend it in regard to those directors who succeed to the Chair during their term as a director.