Mr Christian Thimann
Chair
EU High-Level Expert Group on Sustainable Finance
European Commission

By email: fisma-sustainable-finance@ec.europa.eu

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Dear Mr Thimann

Thank you for the opportunity to comment on the EU High-Level Expert Group on Sustainable Finance (HLEG) 'Financing a Sustainable European Economy' Interim Report. Our response focuses on the policy direction set out in the Interim Report as opposed to the specific questions posed in the Questionnaire.

The Financial Reporting Council (FRC) promotes high quality corporate governance and reporting to foster investment. We promote high standards of corporate governance through the UK Corporate Governance Code ('the Code') and encourage engagement between investors and companies through the UK Stewardship Code ('the Stewardship Code). We set standards for corporate reporting, audit and actuarial practice and monitor and enforce accounting and auditing standards. We also oversee the regulatory activities of the actuarial profession and the professional accountancy bodies and operate independent enforcement arrangements for public interest cases involving accountants and actuaries.

We welcome the wide-ranging ideas and the overall policy direction attempting to embed sustainability factors more widely and effectively within the financial framework. In supporting this overall aim we encourage the HLEG to prioritise its work on those ideas which are likely to have the most impact on the financial system. The Interim Report notes the main policy changes you are proposing but also includes a range of other policy areas for further discussion. Ordering and prioritisation of a targeted set of proposals in the Final Report, along with a clear rationale explaining the desired outcomes and timeframes, would be helpful.

In some areas the Interim Report does not identify those bodies with the greatest ability to effect change. For example, much of the accounting framework discussion focuses on the European Financial Reporting Advisory Group (EFRAG), however EFRAG does not have decision-making or commissioning powers. It can only endorse standards agreed by the International Accounting Standards Board (IASB), rather than draft standards of its own accord. We suggest the HLEG considers where best to direct specific recommendations in the Final Report.

We agree with the HLEG's assessment that sustainability needs to be reinforced through the corporate and investment chain. Policy changes should be coordinated across a range of areas and a sustained drive for addressing these issues through different policy approaches is needed. There should be alignment between both director and investor objectives and this is not always evident. We agree with the HLEG that governance, of both companies and investors, has a central role to play. The FRC is currently undertaking a comprehensive review of the Code, changes to which we will be consulting on in November. Amendments to the Code, along with proposed amendments to the 'Guidance on the Strategic Report', on which we are currently consulting, aim to drive best practice and responsible decision making by ensuring that the board and managements' roles in delivering long-term success are central to their activities and reporting. European countries already share their experiences through the European Corporate Governance Codes Network (ECGCN), which meets twice a year to discuss governance best practice. The ECGCN's approach allows for knowledge sharing, taking account of the different legal and regulatory structures in each of the Member States.

Last year we undertook a tiering exercise on the Stewardship Code, which resulted in more comprehensive information on the approach to stewardship by signatories to the Code. We will be consulting on detailed changes to the Stewardship Code in 2018, but will ask broad questions on the direction of reform as part of our November Code consultation. Likely questions include how more effectively to encourage best practice; how to ensure environmental, social and governance (ESG) and sustainability issues are reflected in investment activities; and the role of reporting. The EU's new Shareholder Rights Directive (SRD) is relevant in this context, as it will require changes to stewardship reporting across Member States. The HLEG should consider how the large amount of activity in this area aligns with the implementation of the SRD.

We agree with the HLEG that it is important to ensure that legal duties drive appropriate behaviour and best practice. In the UK, much work has been carried out on the issue of fiduciary duty. For example, as a result of its report into fiduciary duties in the investment chain, the Law Commission published guidance for trustees: "Is it always about the money? Pension trustees' duties when setting an investment strategy: Guidance from the Law Commission". This Guidance provides that "trustees should take account of financially material risks. But the law does not prescribe a particular approach. It is for trustees' discretion, acting on proper advice, to evaluate which risks are material and how to take them into account". As such, UK trustees already have a positive duty to assess which issues they consider material and to invest according to these considerations. However, the Law Commission did not recommend that fiduciary duty be amended to require ESG factors to be taken into account and given differing legal and regulatory structures across Member States such an approach may prove difficult. Whilst it is important to consider the legal and regulatory framework, encouragement of best practice through the investment chain should not focus solely on the role of fiduciary duty and should address wider regulatory and legislative impediments.

Thank you for the opportunity to respond to your Interim Report. We look forward to seeing the final report later this year and would be happy to discuss any of the points raised above with you in the meantime.

Yours sincerely

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