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Dear Catherine,

BDO LLP response to 'Proposed revisions to the UK Corporate Governance Code (December 2017)'

We are pleased to have the opportunity to comment on 'Proposed Revisions to the UK Corporate Governance Code (December 2017)' (the Consultation Document).

We welcome the FRC's proposal to streamline and rationalise the UK Corporate Governance Code (the Code), which was beginning to show the effects of its evolution over several years, and to put a greater focus on the principles rather than the provisions. We also support the approach taken to the revision of the Guidance on Board Effectiveness (the Guidance), which we find to be both accessible and clear. We do, however, have three principal concerns over the proposed changes:

- Whilst it is clear that a company is unlikely to be sustainably successful if its directors take decisions without regard to the considerations set out s172 of the Companies Act 2006 (the Act) and that companies that are run by boards that give careful consideration of the matters set out in s172 of the Act when making their decisions will often find themselves contributing to wider society as well as being sustainably successful, we question whether Principle A of the draft Code goes too far in asserting that contributing to wider society is an explicit function of an effective and entrepreneurial board. In our view, Principle A should be reworded so as to more accurately reflect the current statutory duties of a director.

- Although we understand that the proposal has been included in the draft Code as a result of its inclusion in the Governments response to the green paper consultation on corporate governance reform, we note that Provision 3 and Provision 4 deals explicitly with the boards engagement with the company's workforce whereas its engagement with other important stakeholder groups is only dealt with implicitly in Provision 4. We are concerned that the emphasis on employees might be read to imply their primacy over other stakeholder groups. In our view, a sustainably successful company must have due regard to all of its key stakeholders and the explicit recommendation of an engagement mechanism for one, albeit very important, stakeholder group may be to the detriment of the other considerations set out in s172 of the Act.

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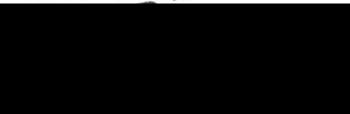
- We do not agree with the removal of the exemptions for companies below the FTSE 350. Whilst we agree that all companies should strive for the highest standards of corporate governance and acknowledge that the Code is applied on a "comply or explain" basis, we do not consider that a an approach that might be accused by some of being "one size fits all" is helpful in this respect. We would note that there is a wide range of company sizes on the Main Market of the London Stock Exchange (the principal target audience for the Code) and that the range of companies that might consider adopting the Code might well increase further at the smaller end of the market following the proposal that AIM-listed companies must "adopt a recognised corporate governance code". In our view, considering the significant gulf in size between the largest and smallest companies that might adopt the Code, there is a strong argument that smaller companies should be treated differently in some of its more stringent and costly aspects that perhaps have more limited relevance to smaller entities.

We also welcome the FRC's consultation on revisions to the Stewardship Code. We are of the view that the Stewardship Code should clearly emphasise that, although asset managers, asset owners and service providers all undertake different roles in the investment chain and, often, will have different strategies and objectives to their peers, they share a collective responsibility to promote the long term success of companies in such a way that the ultimate providers of capital also prosper. We are also of the view that good corporate governance will best be achieved though the encouragement of a healthy dialogue between companies and investors and that that would best be achieved through the UK Corporate Governance Code and the Stewardship Code adopting a similar structure, language and set of objectives. Where the UK Corporate Governance Code recommends that something is done, so should the Stewardship Code recommend that investors engage with directors in such a way that the objective is achieved. In doing this, the FRC would be sending a powerful message to both investors and directors that they should be pulling in the same direction.

We note that, in several places in the Consultation Document, you ask whether we consider that the proposals would result in a meaningful change in practice (eg Questions 3 and 9). In our view, whether or not change will result from any mechanism introduced by a company as a result of a revised Code or Guidance will depend on how, and with what degree of commitment, that mechanism is implemented rather than the nature of the mechanism itself; there is little a governance code can do to influence this. Having said this, we are aware that the corporate governance statement and directors' remuneration report are currently outside of the scope of the FRC's powers and we encourage the FRC to continue to lobby the Government to enhance its powers to cover all aspects of the annual report, rather than just the financial statements, directors' report and strategic report. If these powers were obtained, it would at least allow the FRC to monitor and address instances of poor and incomplete disclosure, which may in turn have a positive effect on underlying practice.

Our detailed responses to the questions raised in the Consultation Document are set out in the attached appendices to this letter.

Yours sincerely,



David Isherwood
Partner
For and on behalf of BDO LLP

Appendix 1: Responses to the questions raised in the Consultation Document in respect of the 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?

Subject to the observation we make in our response to Question 6 below, and on the assumption that the FRC is able to achieve its target finalisation date early summer 2018, we agree with the proposed application date of periods beginning on or after 1 January 2019. Any significant delay to the publication of the final revised UK Corporate Governance Code (the Code), however, may make it more challenging for companies to successfully implement the changes by 1 January 2019. This may particularly be the case for smaller listed companies affected by the proposed removal of the concessions currently available to companies outside of the FTSE 350.

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

On the whole, we found the draft Guidance to be accessible and clear. In particular, we found the "questions for boards" and similar illustrative guidance useful. One general observation we would make however, which applies equally to the approach taken in the draft Code, is that recommended or expected disclosures are embedded within the text. In our view, explicit disclosure recommendations (together with their suggested location - the annual report or the company's website) should be more clearly highlighted.

In addition to this general point, we have the following more specific observations about the draft Guidance:

The concept of the company's purpose is introduced into the draft Code in Principle A and in Part 1 of the draft Guidance. This term seems to have been introduced into the FRC's lexicon as part of the recent exposure draft on revisions to Guidance on the Strategic Report. In our comment letter to that consultation, we raised a concern about the clarity of this term's definition (See, for example, our response to Question 9, part (e) in that comment letter); our concerns are equally applicable to this consultation. We do not disagree in principle with the FRC introducing this concept as a focal point from which everything else springs but we are concerned that an ill-defined/ill-explained concept of "purpose" will result in boiler plate and uninformative disclosures. In consequence, in our view, the Guidance should include a better explanation of what is meant by a company's purpose, which is consistent with the definition ultimately used in the revised Guidance on the Strategic Report.

On a related matter, we draw your attention to the concern we raised in our response to the Guidance on the Strategic Report consultation regarding the interaction of the terms such as purpose, strategy, business model and objectives. In our view, the draft Guidance should clearly differentiate between these concepts and make clear the part each plays in achieving the aims of the Code. It is essential that these terms are defined and used consistently throughout the FRC's library. We also note that the first sentence of Provision 1 no longer explicitly defines the term "business model" and nor does the draft Guidance.

We also draw your attention to our concern, described in our response to Question 3 below, regarding the apparent emphasis on employees over other stakeholders in a company. This concern is equally applicable to the draft Guidance.

We note that Section 4 of the draft Guidance (paragraphs 98 to 101) makes some recommendations on the viability statement. In our view this material would be better included in Appendix B to Guidance on Risk Management and Internal Control, which deals with the viability statement in substantial detail. We also consider that the drafting of these paragraphs adopts the tone of a periodic assessment of the current quality of viability statements observed in the market, rather than describing how a good viability statement should be prepared.

Finally, as alluded to in the Consultation Document, we are aware that the FRC and others have expended a lot effort in encouraging companies to produce viability statements that address investor (and other stakeholder) needs, including the encouragement of the "two stage approach" to drafting. In our view, the "one stage" nature of early viability statements was at least partially due to a misinterpretation of the requirements of Provision C.2.2 in the extant Code. In view of this, we recommend that the FRC takes the opportunity to clarify the wording of this source requirement (Provision 31) in the draft Code, rather than leaving it unamended.

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

It is the statutory duty of a director, under s172 of the Companies Act 2006 (the Act), to "act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to: The likely consequences of any decision in the long term; the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment; the desirability of the company maintaining a reputation for high standards of business conduct; and the need to act fairly as between members of the company".

Whilst it is clear that a company is unlikely to be sustainably successful if its directors take decisions without regard to the considerations set out s172 of the Act and that companies that are run by boards that give careful consideration of the matters set out in s172 of the Act when making their decisions will often find themselves contributing to wider society as well as being sustainably successful, we think Principle A of the draft Code goes too far in asserting that contributing to wider society is an explicit function of an effective and entrepreneurial board. In our view, Principle A should be reworded so as to more accurately reflect the statutory duties of a director.

In addition to this, although we understand that the proposal has been included in the draft Code as a result of its inclusion in the Governments response to the green paper consultation on corporate governance reform, we note that Provision 3 and Provision 4 deals explicitly with the boards engagement with the company's workforce whereas its engagement with other important stakeholder groups is only dealt with implicitly in Provision 4. We are concerned that the emphasis on employees might be read to imply their primacy over other stakeholder groups. In our view, a sustainably successful company must have due regard to all of its key stakeholders and the explicit recommendation of an engagement mechanism for one, albeit very important, stakeholder group may be to the detriment of the other considerations set out in s172 of the Act.

The above points notwithstanding, we agree with the encouragement of boards to establish a method for gathering the views of key stakeholders, including the company's workforce, and we are supportive of the wording of the draft Code provision 3, which makes it clear that the three specified options are "normal" mechanisms but that other mechanisms to achieve the overriding objective of gathering the views of key stakeholders may be more appropriate to an individual company's circumstances.

We note that you question whether the methods set out in Provision 3 will "achieve meaningful engagement". In our view, whether or not meaningful engagement will result from any mechanism introduced by a company will depend on how, and with what degree of commitment, that mechanism is implemented in practice rather than the nature of the mechanism itself; there is little a governance code can do to influence this.

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?

No, we do not consider it appropriate for the FRC to include more specific reference to the UN SDGs, or other NGO principles, in the draft Code or Guidance. In our view, where material in other sources of guidance is considered necessary to encourage the adoption of best practice governance or reporting, it should be built directly into the FRC's material. Unnecessary references to other sources of guidance, whether general or to specific aspects of them, adds to the complexity of an already difficult area. It would also give rise to the question of to what extent the material cross-referenced from the draft Code or Guidance is considered as authoritative as the FRC's own material.

Question 5: Do you agree that 20 per cent is 'significant' and that an update should be published no later than six months after the vote?

Whilst we acknowledge that 20% has become the accepted definition of a significant vote against, we are uncomfortable with the inclusion of a "bright line" in an otherwise principles-based code. In our view, the draft Code should retain a reference to "a significant vote against" in addition to explicitly indicating that 20% would generally meet this definition. This would encourage boards to consider the most appropriate action when votes against fall close to, but under, the 20% threshold. It would also encourage the use of judgement where, for example, a company has a single shareholder (or group of related shareholders) that controls a significant proportion of the voting rights, in which circumstances a lower vote against a resolution may nonetheless indicate the existence of a valid cause for concern.

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.

No, we do not agree with the removal of the exemption for companies below the FTSE 350 to have an independent board evaluation every three years, or the other exemptions currently applicable to smaller Code-adopting companies (the FTSE 350 exemptions). Whilst we agree that all companies should strive for the highest standards of corporate governance and acknowledge that the Code is applied on a "comply or explain" basis, we do not consider that an approach that might be accused by some of being "one size fits all" is helpful in this respect.

We would note that there is a very wide range of company sizes on the Main Market of the London Stock Exchange (the principal target audience for the Code) and that the range of companies that might consider adopting the FRC's Code might well increase further at the smaller end of the market following the proposal that AIM-listed companies must "adopt a recognised corporate governance code". In our view, considering the significant gulf in size between the largest and smallest companies that might adopt the FRC's Code, there is a strong argument that smaller companies should be treated differently in some of its more stringent and costly aspects. If the revised Code were not to address this issue, it would make it less attractive to smaller companies (including those listed on AIM) and would run counter to the FRC's objective of promoting good corporate governance practices beyond the largest companies.

It is also our understanding that proxy voting agencies do not always consider explanations for non-compliance with Code provisions as closely as they might, leading to a tendency to vote against certain resolutions when governance practices that are appropriate to the size and nature of the company in question may be in place. Whilst, on the assumption that a company has provided a valid explanation for a non-compliance with a Code provision, this is arguably a failing of the approach taken by the proxy agent rather than the one of the Code or its "comply or explain" premise, it does create some potential practical issues for companies at the smaller end of the market where explained non-compliance may be more prevalent, particularly if the exemption for companies below the FTSE 350 are eliminated.

If the FRC does continue with proposal to remove the FTSE 350 exemptions, then we would encourage the inclusion of a transitional period for affected companies in order to allow them adequate time to make the necessary changes to their governance arrangements.

On a related matter, we question whether the final sentence in Provision 14 of the draft Code, which draws a distinction between FTSE 100 companies and others, is consistent with the logic set out in the Consultation Document for the removal of exemptions that apply to companies outside of the FTSE 350. In our view, the decision over how many non-executive directorships might be appropriate for an executive director will be a function of the demands of those roles rather that something that relates directly to the index in which a company included. It is also unclear to us what is meant by the words "or equivalent" in that Provision; does it mean company with a similar market capitalisation, complexity or position in an index?

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?

Yes, we consider nine years to be an appropriate time period to include in the draft Code. Whilst we agree that it seems a relatively arbitrary tenure to specify, it is a commonly used criterion for independence assessments and we can identify no compelling reason for this practice to change. Whilst the "fact" of independence relates to the state of mind or approach of an individual director, the perception of independence is also vitally important for building trust with shareholders and other stakeholders. In consequence, in our view, it is reasonable and appropriate to expect to see an explanation of a directors continuing independence once he/she has served for nine years and also where other circumstances that are perceived to adversely affect independence exist.

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

Yes, we agree that it is not necessary to provide for a maximum period of tenure so long as a company is expected to provide a full and clear explanation of the continuing independence of a long-standing director. In our view, imposing a maximum period of tenure would be contrary to the draft Code's principles-based approach.

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?

Yes, we agree that the overall changes proposed in Section 3 of the draft Code will help to encourage greater action to build more diverse boards, both in the executive pipeline and in the company as a whole. However, as noted in our response to Question 3 above, the effectiveness of the draft Code and Guidance in achieving this aim will depend on how, and with what degree of commitment, it is applied in practice.

In our view, effective board succession planning is an essential component of governance for companies wishing to remain sustainably successful over the long-term. Ensuring that there is a good "pipeline" of candidates throughout the organisation is also very important in terms of ensuring a continuity of a company's culture and values and, in consequence, we agree with the emphasis given to that aspect of succession planning in draft Guidance. Indeed, we consider that its importance could have been emphasised more in the draft Code.

The board evaluation process is an important part of the mechanism for identifying and addressing sub-optimal performance which may, at least in part, result from a lack of boardroom diversity. In this context, we were surprised to see that paragraph 93 of the draft Guidance apparently restricts the scope of the draft Codes requirement for external facilitation of this process to Premium-listed companies. In our view, such a restriction runs contrary to the logic set out in the Consultation Document for the removal of exemptions that apply to companies outside of the FTSE 350 and the reference should either be removed or, consistent with our view expressed in our response to Question 6 above, changed to reflect the differing sizes of companies applying the Code rather than the nature of their listing.

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.

We agree that it would be beneficial for all companies to report on the gender balance on the executive committee and direct reports to the executive committee but we think that there is a more effective method of achieving this objective than amending the Code.

As noted in the paragraph 69 of the Consultation Document, Quoted companies must already provide a breakdown of gender balance between three categories of seniority in their strategic reports. We agree that the definition of "senior management" in the Act is unhelpful in terms of promoting comparability, not least because of its inclusion of directors of all subsidiary companies irrespective of the significance of those subsidiaries to the group. In our view, however, this is an issue that should be addressed by the Government through an amendment to the Act rather than through the FRC adding an additional, very similar disclosure requirement into the draft Code. In this regard, we note that the Government is planning to publish draft amendments to the Act's strategic report requirements in March 2018 as part of its work on corporate governance reform and we see no reason why this anomaly cannot be addressed at the same time; the FRC should be using its influence on the Government to encourage this approach. As an alternative course of action, we also note that paragraph 7.54 of the FRC's Guidance on the Strategic Report seeks to address this issue through the recommendation of an enhanced analysis in the statutory disclosure; this approach could be adopted in the draft Code or Guidance or the issue could be addressed as part of the FRC's ongoing project to up-date Guidance on the Strategic Report for the recent EU Non-financial Reporting Directive changes, which is due for completion later this year.

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.

Whilst the importance of boardroom gender diversity is undeniable, it is also vitally important that other forms of diversity are not seen of secondary importance. In consequence, we support the FRC's approach to give equal emphasis to psychological type, background and ethnic diversity in the draft Code and Guidance.

In this context it follows that there is a strong argument for providing an analysis of ethnic diversity in addition to that of gender diversity. However, gathering this data could be an unreliable, complex and sensitive process and, in consequence, we support the FRC's decision not to recommend such a disclosure at this stage. We would recommend, however, that the FRC revisits this decision next time the Code is revised.

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?

Yes, we agree with the FRC's decision to retain the requirements included in the current Code, even though there is some duplication with the Listing Rules, the Disclosure and Transparency Rules or the Act. As noted in our response to Question 4 above, we consider it beneficial to take an approach that reduces the number of sources of requirements a company is expected to consult.

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.

Yes, we support the decision to include the requirements included in Provision C.3.3 of the current Code to the draft Guidance. Although committee terms of reference are an important element of board governance arrangements and, in consequence, we would strongly encourage their publication in on the company website, we do not consider reference to them in the draft Code to be necessary to achieve this.

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?

Whilst we support the wider remit for the remuneration committee as set out in Principle O and Provision 33, we consider it appropriate to restrict the Principle to requiring the committee's responsibility to workforce policies and practices "on remuneration" rather than a wider interpretation and that the remuneration committee should be aware of workforce remuneration policies and practices when setting director remuneration rather than having responsibility for wider workforce remuneration policies and practices.

We note that Provision 32 of the draft Code requires the chair of the audit committee to have served on a remuneration committee for at least 12-months prior to his/her appointment. Whilst we can see the merit in this requirement for the chair of the remuneration committee to have relevant experience, it is not clear to us why it is restricted only to the remuneration committee chair and not a more general requirement that applies to all committee chairs and, indeed, the chair of the board.

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

In our view, companies should be transparent when setting executive pay in order to develop of trust between companies, their shareholders and other stakeholders (principally the wider workforce). Remuneration policies and practices should encourage directors to fully consider their duties under s172 of the Act and, in so doing, support the delivery long-term growth in shareholder value.

Shareholders should also continue to take an active interest in every company they invest in. Their active involvement can encourage a company to improve its corporate governance measures and thus lead to the company enhancing its performance. This will include, but not be limited to, engagement on matters of remuneration.

Overall, the draft Code will promote further the aim of ensuring executive remuneration drives long-term sustainable performance.

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

Yes, in our view the changes proposed are clear and to the point and will give meaningful impetus to boards in exercising discretion. However, this view notwithstanding, we consider it more likely that investor engagement and challenge would be a more effective method of achieving this aim.

Appendix 2: Responses to the questions raised in the Consultation Document in respect of the 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?

A key challenge in the development and maintenance of a purely voluntary code is to take an approach that promotes the maximum possible adoption whilst not diluting its recommendations down to the "lowest common denominator". On this basis, the FRC must listen to those at which this Stewardship Code is aimed and seek to address their concerns as far as possible.

This point notwithstanding, however, we would be concerned about the adoption of an approach that requires the development of several different codes, the applicability of which depends on the nature of investment or organisational form. We consider that this would lead to practical problems including, for example, scoping each separate code and maintaining consistency between the different codes. In our view, a stewardship code could achieve its aims if it is primarily principles-based and if, where necessary, it contains explicit derogations or explanations for different signatory categories.

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?

One benefit of the "comply or explain" approach is that signatories would be required to clearly justify an instance of non-compliance with the FRC's view of best practice. The risk with a "disclosure and transparency" approach is that signatories may elect to avoid dealing with a best practice expectation where they either fall short of that expectation, consider it irrelevant or where they have adopted an alternative approach to achieve the same end as intended by the best practice expectation. "Comply or explain" encourages best practice expectations to be tackled head-on.

Creating a robust and effective "comply or explain" framework would be a difficult objective to achieve over a short timeframe and in one iteration and it should be borne in mind that the UK Corporate Governance Code's similar approach has taken many years to develop and mature. If the FRC were to take this route, it should be approached as a similarly long-term journey.

We note that the current version of the Stewardship Code describes itself as a "comply or explain" framework but allows signatories to explain non-compliance with one or more of the seven overarching principles; this is inconsistent with the approach taken by the UK Corporate Governance Code, which does not allow non-compliance with its principles. We also note that the Stewardship Code contains "guidance" rather than clear "provisions"; a lack of clear and explicit expectations makes it difficult to identify where an explanation of "non-compliance" might be required.

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

As noted in our response to Question 18 above, a "comply or explain" approach that forces signatories to tackle best practice expectations head-on might be more effective in highlighting differences in practice. This, in turn, would stimulate debate about what constitutes best practice and which signatories achieve this level.

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

Yes, we are of the view that the requirements and recommendations of the Stewardship Code should, where practicable, mirror those of the UK Corporate Governance Code. Good corporate governance will best be achieved though the encouragement of a healthy dialogue between companies and investors and, in our view, that would best be achieved through the UK Corporate Governance Code and the Stewardship Code adopting a similar structure, language and set of objectives. Where the UK Corporate Governance Code recommends that something is done, so should the Stewardship Code recommend that investors engage with directors in such a way that the objective is achieved. In doing this, the FRC would be sending a powerful message to both investors and directors that they should be pulling in the same direction.

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

Although asset managers, asset owners and service providers all undertake different roles in the investment chain and, often, will have different strategies and objectives to their peers, they share a collective responsibility to promote the long term success of companies in such a way that the ultimate providers of capital also prosper. We note, however, that the phrase "long term" is only used twice in the current Stewardship Code. In our view, the Stewardship Code should emphasise the long term nature of the assets in question, even though individual asset managers, asset owners and service providers may only have a short term association with them.

In addition to the above, in our view, the introduction of clearer provisions that look to the longer term would encourage greater engagement in this area. The longer term perspective should be incorporated throughout the Stewardship Code rather than seen a separate principle or general objective.

Question 22: 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.

Similarly to the view expressed in our response to Question 3 above, it is clear that a company is unlikely to be sustainably successful if its directors are encouraged by investors to take decisions without regard to ESG factors and broader social impact and that companies with investors that encourage boards to give careful consideration to ESG factors and broader social impact when making their decisions will often find themselves contributing to wider society as well as being sustainably successful. On this basis, we would consider it appropriate for the Stewardship Code to mirror the draft UK Corporate Governance Code's principle for fostering effective engagement with wider stakeholder groups. Only in this way can investors seek to have informed engagement with the boards of the companies in which they invest. In our view, it would be inequitable to focus on directors' statutory duties under s172 of the Act with regards to ESG factors and broader social impact without also giving strong encouragement to investors to support them in this responsibility.

The challenge with this approach, however, is that whilst individual companies will generally have a relatively small number of ESG factors and areas of broader social impact to consider, asset managers, asset owners and service providers will often deal with a great many companies, each with differing ESG factors and areas broader social impact. In consequence, the approach adopted by the FRC in this area will need to carefully balance the ideals of investors who are fully informed of the ESG factors and broader social impacts relevant to their investee companies with the practicalities of scale.

Question 23: 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?

We agree that the Stewardship Code should refocus on expectations around reporting on engagement rather than just voting. Whilst the FRC is not in a position to assess the quality of engagement, encouraging investors to provide better information on this matter may allow others to undertake this assessment. In our view, assertions on best practice disclosure (eg best practice voting disclosure), whether that is through less formal guidance or through more explicit Stewardship Code provisions, would also be a useful way of promoting transparency.

Question 24: How could the Stewardship Code take account of some investors' wider view of responsible investment?

It is the nature of a generic code that it cannot be all things to all people. It would appear from the Consultation Document that the FRC is willing to make significant changes to the Stewardship Code but this task could quickly become unmanageable if the project is too wide in scope. In our view, the FRC should first seek to address the matters that are directly relevant to the majority before seeking to widen the scope of the Stewardship Code to cover a smaller subsection of the target audience.

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

We have no comment on this question.

Question 26: 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 acknowledge that some stakeholders may consider it beneficial for certain types of information disclosed as a result of the Stewardship Code be subject to some level of assurance but the nature of the information on which assurance is considered useful may differ from stakeholder to stakeholder and/or between types of signatory to the Stewardship Code. In our view, therefore, any verification recommendation is at risk of being too inflexible and broad to be cost effective. Inevitably, if stakeholders consider assurance of some or all of the stewardship information to be desirable, the market will respond to it.

Question 27: Would it be appropriate for the Stewardship Code to support disclosure of the approach to directed voting in pooled funds.

We have no comment on this question.

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

As noted in our response to Question 20 above, we are of the view that the requirements and recommendations of the Stewardship Code should, where practicable and appropriate, mirror those of the UK Corporate Governance Code. In consequence, we would consider it appropriate for the Stewardship Code to encourage investors to engage with companies on the topic of board and executive pipeline diversity.

Question 29: Should the Stewardship Code explicitly request that investors give consideration to company performance and reporting on adapting to climate change.

No, we do not consider it appropriate to single out performance and reporting on adapting to climate change when there may be other ESG factors and areas of broader social impact that are potentially more important to a company's longer term sustainability. In our view, a broader requirement to engage with companies constructively on ESG factors and areas of broader social impact should be sufficient to encourage signatories to give consideration to specific company performance and reporting on adapting to climate change where that is relevant to their longer term sustainability.

Question 30: 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?

In our view encouraging signatories to define the purpose of stewardship with respect to the role of their organisation and specific investment or other activities could be beneficial, although the provision would have to be carefully worded so as not to allow scope for a bland or boilerplate statement. In the same way as companies are required to describe their business model and strategy, so signatories could describe their stewardship responsibilities and engagement practices in the context of their position in the investment chain and their own business objectives.

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?

As noted in our response to question 30 above, we can see some merit in this disclosure. Where the role of an organisation or the specific investment or other activities differ from fund to fund, aggregated information might soon become so generic as to be irrelevant. In consequence, we would support requiring this disclosure to be made at a more desegregated level, be that by individual fund or by groups of funds where similar arrangements apply. Similarly to the point made in our response to Question 22 above, however, we note that asset managers, asset owners and service providers will often deal with a great many funds. In consequence, the approach adopted by the FRC in this area will need to carefully balance the ideals of disaggregated disclosure with the practicalities of scale.