The co-operative
asset management

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Via e-mail to: codereview@frc.org.uk

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Dear Chris,

CONSULTATION DOCUMENT: GENDER DIVERSITY ON BOARDS

The Co-operative Asset Management (TCAM) welcomes the opportunity to respond to the FRC's consultation on potential revisions to the UK Corporate Governance Code (the Code) specifically in respect of gender.

About TCAM

TCAM considers that sound corporate governance in the companies in which it invests is of central importance to create and sustain long-term shareholder value. We consider that it is the responsibility of institutional investors, such as ourselves, to act as owners of the companies in which they invest. We seek to maximise value from our investments by using our influence as shareholders, through engagement and the use of our voting rights, to further good corporate governance in investee companies.

As part of the Good Companies Guide series, TCAM prepared a paper entitled "Diversity and Gender Balance in Britain plc", which was published in the Observer on 23 August 2009. This involved us ranking companies on the gender balance of the board as well as the presence and depth of policies and practices likely to improve gender balance and diversity. The feature met with an extremely positive reception from the media and government and gained significant exposure for the issue.

Our study primarily considered the issue of gender balance from the perspective of human capital management. It concluded that the poor representation of women in decision-making roles suggests significant opportunities to improving corporate performance while also addressing potential issues of social justice relating to discrimination.

TCAM has been active in engaging companies on the issue of gender balance. A case in point is United Business Media. Following dialogue in 2010 we were delighted to see the latest Annual Report and Accounts of United Business Media (UBM) includes the gender information we asked them to disclose. UBM now commendably include both a standard breakdown of males and females in the office as well as an analysis of the managerial positions held by each sex along with a comparison with the previous year's data, showing gender mobility.

We have continued our engagement on improving gender balance in collaboration with other United Nations-backed Principles for Responsible Investment (PRI) signatories.

Along with US investors Pax World and Calvert we are leading a group of nine investors engaging with 57 companies in eight countries. The international composition of the collaborative team reflects the fact that gender balance is a problem across the world. Indeed Governance Metrics International's global study of gender balance at 4200 companies around the world showed only 8.9% of board seats were held by women. We are co-ordinating engagement in the UK and selected a group of companies representing a range of industries. As expected the responses so far have shown a number of different approaches and reflect varying levels of management sophistication in relation to the issue. We are benchmarking the responses and will follow them up with the aim of agreeing plans with each company on how to progress the gender agenda.

We have previously espoused the benefits of a diverse board in consultation responses such as our input into the UK Corporate Governance Code, at a time when the concept was viewed as leftfield. Furthermore, we fed our views into the UK Department for Business Innovation & Skills (BIS) consultation on women on boards headed by Lord Davies.

Going forward, we are imminently submitting our response to the Green Paper on the EU corporate governance framework which asks, amongst other matters, three questions on gender balance in the boardroom.

As part of our involvement with the aforementioned international collaboration several other global institutional investors have also co-signed our response.

About Co-signatories

<u>Calvert Investments</u>

Calvert Investments is a leader in the field of sustainable and responsible investing (SRI) for over 25 years with approximately $14.5 billion in assets under management. Calvert believes that healthy corporations are characterized by sound corporate governance and overall corporate social responsibility. The well-governed sustainable and responsible company meets high standards of corporate ethics and operates in the best interests not only of shareholders but of other stakeholders - employees, customers, communities and the environment. In our view, companies that combine good governance and corporate social responsibility avoid unnecessary financial risk and are better positioned for long-term success. Calvert believes in particular that diversity is a critical attribute to a well-functioning board and an essential measure of good governance. In an increasingly complex global marketplace, the ability to draw on a wide range of viewpoints, backgrounds, skills, experience and expertise internally increases the likelihood of making the right decisions. We believe director and nominee diversity that includes race, gender, culture, age, thought and geography helps to ensure that different perspectives are brought to bear on issues, while enhancing the likelihood that proposed solutions will be nuanced and comprehensive.

Calvert has been vocal in our support for board diversity disclosures. For example, when the U.S. Securities and Exchange Commission proposed rules related to enhancing proxy disclosures, we provided the following comment in support: http://sec.gov/comments/s7-13-09/s71309-130.pdf. Furthermore, we actively engage companies within our portfolios on this important issue both directly and through our proxy voting guidelines. Calvert's proxy voting guidelines differ from TCAM's voting instructions and do not include the voting instructions that are described in this letter. To review Calvert's proxy voting policy, please see: http://www.calvert.com/Documents/proxy-voting-guidelines-2010.pdf.

Vancity Investment Management Ltd

Vancity Investment Management Ltd. is a Canadian discretionary portfolio manager providing investment services to individual high-net worth clients, pension funds, foundations and socially responsible mutual funds. VCIM is a wholly owned subsidiary of Vancity, Canada's largest credit union.

Pax World Management LLC

Pax World is a recognized leader in the field of Sustainable Investing – the full integration of environmental, social and governance (ESG) factors into investment analysis and decision making.

The response

We have made our comments in plain text, whilst leaving the consultation narrative in italics and bold for context.

The new UK Corporate Governance Code applies to accounting periods beginning on or after 29 June 2010. This means that the majority of companies will only have been required to apply the principle that boards must consider the benefits of gender diversity from 2011. Some respondents may consider that the new principle should be given time to work before the Code is further strengthened. Others may share Lord Davies' view that, in view of the slow rate of progress in recent years, an explicit disclosure requirement is needed to focus boards' attention on the issue. ***The FRC welcomes views on whether further changes to the Code should be made****.*

We share Lord Davies' view that we should press ahead without delay in incorporating gender disclosure into annual reporting as a voluntary approach has yielded disappointing progress. In short, we are supportive of additional changes.

If a change were to be made to the Code to give effect to Lord Davies' recommendation, the FRC would propose to amend Provision B.2.4, which concerns the report of the nomination committee. ***The FRC welcomes views on this wording****:*

"A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments. ***This section should include a description of the board's policy on gender diversity in the boardroom, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives****. An explanation should be given if neither an external search consultancy nor open advertising has been used in the appointment of a chairman or a non-executive director."*

As we view gender to be an integral part of good corporate strategy, and in the spirit of integrated reporting, we do not have any specific wish for the work of the nomination committee to be separated out. However, we appreciate for practical purposes this may be the preferred method of reporting for companies given the general rubric of annual report and accounts. We would be strongly in favour of a more comprehensive report from the Nominations Committee as part of the Annual Report.

We agree that the recommended wording sets out the fundamentals of the information investors need to ascertain how well a company is managing the risks and opportunities presented by this debate. We would suggest that the disclosure requirements go further and ask for disclosure on the role that external executive search firms have played in all board level appointments. Of particular interest would be the approach the executive search firm takes towards, for instance, all female shortlists, as recently debated in the inaugural 30% Club meeting.

Particular emphasis should be on the need for companies to offer an explanation where an aspirational target has not been reached and offer stakeholders insight into barriers to realisation of goals. The linking of aspirations with Key Performance Indicators (KPI) would mark a company out as best in class, in our opinion, and offer a significant degree of comfort that it has a handle on the matter.

Finally, some discussion about what practical actions work on the ground in removing barriers and an honest view on where short comings have been identified and remedial initiatives that the company is exploring would be very helpful. We are conscious that this is a developing subject, and although best practice has been developed in some areas, there is no one-size-fits-all solution.

The appendix to this consultation shows how this additional wording would fit into Section B.2 of the Code. In his report, Lord Davies recommends that "in line with provision B.2.4... chairmen should disclose meaningful information about the company's appointment process and how it addresses diversity in the company's Annual Report including a description of the search and nominations process". ***The FRC does not consider that this recommendation requires a change to the Code, but welcomes views on whether it would be helpful to set out some of the key elements to be covered by a gender diversity policy - such as the criteria used when recruiting directors, or the steps taken to develop of senior executive talent - and if so, whether this should be done in the Code or elsewhere.***

We believe this particular recommendation should be integrated into the Code with an increased emphasis on implementation; for instance flexible working patterns, improved dialogue and transparency over the whole board nominations processes including prior consultation with investors. Furthermore, we would strongly welcome the remit of these improved disclosure requirements extending to cover the two levels below the board, given the pipeline blockages which a growing number of empirical studies draw attention to.

One underplayed element in drawing up a gender diversity policy which boards may welcome, and which goes some way to addressing the pipeline problem, is widening the pool of talent for executive searches. It is often said there is a lack of women with board level exposure who are then, in turn, not put forward for executive level roles – a 'catch 22' situation. One observable solution would be to explore the talent pools of company secretaries given their frequent exposure at board level and role as sounding board to the board and guardian of good governance. This is particularly in respect of non-executive roles. Equally, consideration of high-achieving women in the professional services as well as academia and the civil service would provide a fruitful avenue for companies and executive search agents to pursue.

We strongly agree with the 30% Club's view that `the wording should require the board to set out not only its general policy, but also its numerical target for gender diversity in the boardroom and a deadline for when it expects to achieve this. Given the volume of research that shows that change in the dynamics of a team is only reached when a threshold of 30% is achieved we believe that boards should be required to explain their rationale for setting a target of less than 30% and if their deadline for achieving this target is more than 5 years away'.

The FRC believes that, were the proposed change to provision B.2.4 to be made, the board evaluation process would provide an important opportunity for boards to review progress on implementing their diversity policy, and whether it was contributing to the ultimate objective of increasing the board's effectiveness by ensuring that there was an appropriate balance of skills, experience, independence and knowledge of the company.

It would not be appropriate to single out gender diversity for special attention when there are many issues that boards need to consider when evaluating their effectiveness, as illustrated in the FRC's recent 'Guidance on Board Effectiveness'4. But consideration could be given to adding a new supporting principle to Principle B.6 (on board evaluation) which set out some of the most important elements of any review. For example:

*"**Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the board, the board's policy on gender diversity, how the board works together as a unit, and other factors relevant to its effectiveness**."*

*The appendix to this consultation shows how this additional wording would fit into Section B.6 of the Code. **The FRC welcomes views on whether a new supporting principle on board evaluation is desirable and, if so, on the proposed wording.***

Board evaluation is rendered obsolete, in the eyes of investors, unless honest outcomes are reported. Whilst proprietary information is not expected, simply reporting that everything is in perfect working order severely undervalues both the process of board evaluation and the principal-agent contract. The best examples of board evaluation being used as a worthwhile tool are where:

a) A clear methodology is outlined;

b) Areas of strength are identified;

c) Areas of weakness are identified;

d) KPIs or tangible remedial actions are detailed, complete with timeframes, albeit possibly aspirational.

THE TIMING OF ANY CHANGES TO THE CODE

Lord Davies has called on the chairmen of all FTSE 350 companies to announce their aspirational targets by September this year. He has also said that companies should meet his various recommendations on disclosure – including the one relating to the Code - in their 2012 Corporate Governance Statement "whether or not the underlying regulatory changes are in place". For this reason, early implementation of any amendments to the Code may be desirable. Early implementation might also help in the context of the debate taking place in Europe, by demonstrating a workable alternative to quotas. However, companies may have concerns about changes to the Code being made when they may still be coming to terms with the changes introduced in 2010, and while there is a possibility that further changes to the Code might be needed in due course as a result of developments at the European level.

The options for bringing into effect any changes to the Code that the FRC might decide to introduce are:

• The revised Code would apply to accounting periods beginning on or after 29 June 2011, i.e. twelve months after the current Code came into effect. As this consultation runs until 29 July, the new provisions would have to apply retrospectively. However, companies would not be reporting against these provisions until 2012, and FTSE 350 companies may in any event choose to respond more quickly as requested by Lord Davies.

• The revised Code would take effect at the same time as any regulations made by the Government to implement Lord Davies' recommendation on reporting the percentage of women of boards, in senior management and throughout the organisation. Although BIS has not yet given an indication if or when such regulations might be introduced, all changes to company law requirements take effect on one of two dates during the year, so the earliest possibilities would be either 1 October 2011 or 1 April 2012. While this would bring a degree of consistency in implementing the Davies recommendations, it could be disruptive for companies who are accustomed to the Code changing on the same date when it is updated.

• The revised Code would apply to accounting periods beginning on or after 29 June 2012. This would avoid concerns associated with the previous two options but would mean that companies were not required to report against the revised Code until 2013, although they could be encouraged to report on a voluntary basis in 2012 as suggested by Lord Davies.

• Postpone the implementation of any changes until after the FRC's next formal review, in order to avoid making piece-meal changes to the Code. The timing of the next review has yet to be decided, and will be determined in part by whatever action might be taken at EU level to follow up the European Commission's recently published Green Paper, but would not begin until 2012 at the earliest.

The FRC welcomes views on when any changes to the Code that might be introduced should take effect.

Our preference is the first option.

TCAM intends to alter our voting directions with effect from October 2011. Investee companies who hold their AGMs after this date will be assessed as to whether they have made a public statement of aspirational levels of women on their boards, as per Lord Davies' recommendations. Should a company fail to disclose such an aspiration or fail to elect any women to its board we will, in the first instance, abstain on the re-election of the chairman of the nomination committee. Should a company not put forward all its directors for annual re-election we will vote against the re-election of the Chairman and/or members of the Nomination Committee – dependent upon who is put forward for re-election for the year under review. We will adopt a pragmatic approach, analysing on a case by case basis several factors such as the length of tenure for the present Chair of the Nominations Committee and the merit of any explanation why aspirations or appointments have not been forthcoming. We will also take into account membership of the 30% Club.

In 2013, we may escalate an abstention to a vote against where there is still no progress or indication of positive momentum.

Thank you once again for inviting The Co-operative Asset Management to participate in this consultation.

Yours sincerely,

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Please address any queries to Abigail Herron in the first instance. As previously highlighted the following global investors are also cosignatories to the above submission:

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