



Mr Chris Hodge
Corporate Governance Unit
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27 July 2011

Submitted by email to: codereview@frc.org.uk / hard copy to above address

Dear Sir

Thank you for the opportunity to provide our views on the proposed changes to the UK Corporate Governance Code (“the Code”) set out in the FRC’s May 2011 consultation document: Gender Diversity on Boards.

PwC is a leading proponent of good governance both for our clients and the firm and we have responded to all of the FRC’s consultations on the Code and related matters, drawing on the wide range of our activities and experience.

Overall, we support the proposed changes to the Code as set out in the consultation document with some additional suggestions. These are set out in the attached Appendix along with our responses to the specific points on which the FRC is seeking views. However, we would also emphasise the point here that in framing the proposed Code change recommendation, Lord Davies’ report does not use the phrase ‘gender diversity’ just ‘diversity’ and it is this broader diversity, including gender diversity, that should be reflected in any amendments. Other diversity, such as nationality, may be equally important in contributing to an effective board.

Should you have any questions in relation to our response, please do not hesitate to contact either Sean O’Hare or Liz Smith at the address below.

Yours faithfully

A handwritten signature in black ink that reads "Sean O'Hare". The signature is written in a cursive style and is positioned above a horizontal line.

Sean O’Hare

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Points for specific consultation

Whether further changes to the Code are needed in order to help achieve more diverse and more effective Boards

We support further changes to the Code in order to help achieve more diverse and more effective boards as the Code is seen as a source of best practice recommendations, referred to by both listed and unlisted companies. Countries such as Finland, Sweden, Denmark and Australia who have already made similar changes to their corporate governance codes/voluntary charters are seeing progress being made in this area. Without such changes to bring diversity within the 'comply or explain' regime, there is a concern that the rate of progress in this respect is likely to remain slow, as the Higgs Review in 2003 called for greater diversity but our perception is that little has happened in the UK to change the amount of diversity in board composition significantly since then.

In addition, the Code already focuses on board effectiveness and diversity is an important part of this as a considerable body of research now illustrates, eg 'Women Matter: gender diversity, a corporate performance driver', McKinsey & Company and 'The Bottom Line: Corporate Performance and Women's Representation on Boards', Catalyst. Indeed, diversity – including gender diversity – is already mentioned in a supporting principle to B.2 (Appointments to the board) so it would be a logical extension to include some further changes in this area.

Finally, embedding such changes within the Code would emphasise the seriousness UK companies are placing on this issue and may offer an alternative to imposed quotas which are currently under consideration.

If so, what these changes should be – two suggestions are proposed (i) and (ii) below

- (i) Amend Provision B.2.4 dealing with the nomination committee report to add, "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."

We support this recommendation but would point out that Lord Davies' report recommended that the Code should be amended "to require listed companies to establish a policy concerning boardroom diversity, including measurable objectives for implementing the policy, and disclose annually a summary of the policy and progress made in achieving its objectives". The disclosure amendment to B.2.4 suggested above presupposes the establishment of a policy without actually recommending it. Whilst, as noted earlier, the supporting principle to B.2 talks about "...due regard for the benefits of diversity on the board, including gender", this does not go quite as far as recommending the establishment of a policy. Therefore wording should be added – perhaps either as a supporting principle to B.2 or B.1 – on the need to establish a policy.



The importance of including measurable objectives should also not be overlooked in the establishment of this policy as it is a truism that what gets measured gets done.

In addition, although Lord Davies' report is about women on boards, it does not use the phrase 'gender diversity' in framing the Code change recommendation, just 'diversity' – and diversity is clearly wider than gender. Other diversity, eg of nationalities, may be just as important in making up an effective board. The change to B.2.4 would therefore perhaps be better worded to include "... policy on diversity, including gender diversity, in the boardroom ...". This would also be consistent with the existing wording of the supporting principle to B.2.

- (ii) Add a new supporting principle to B.6 on board evaluation stating "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."

Again we support this proposed amendment but, as above, the wording should be '... the board's policy on diversity, including gender diversity....'. The board evaluation might also want to consider the degree of implementation of the diversity policy rather than just the policy itself.

Additionally, it would make sense to mirror this provision in code provision B2.2 which currently states that "The nomination committee should evaluate the balance of skills, experience, independence and knowledge on the board....." by adding diversity to this list.

If changes are made to the Code, when should these come into effect – four suggestions are proposed as follows:

- (i) Accounting periods beginning on or after 29 June 2011, ie 12 months after the current Code came into effect
- (ii) At the same time as any regulations made by the government to implement Lord Davies' recommendation on reporting the percentage of women on boards, in senior management and throughout the organisation (earliest possibilities either 1 October 2011 or 1 April 2012)
- (iii) Accounting periods beginning on or after 29 June 2012
- (iv) Postpone until after the FRC's next formal review of the Code which would not begin until 2012 at the earliest.

We believe that any changes should be brought into effect as early as possible to build on the current momentum in this area. Although suggestion (ii) above would appear logical, suggestion (i) may be preferable if no regulations are introduced or if it takes a long time to introduce these, as may well be the case with so many other pressing issues on the government's agenda at present. Although there may be a concern that suggestion (ii) would be disruptive for companies accustomed to the Code changing on the same date it is updated,



we do not believe this to be a significant cause for concern assuming there is clear communication about the effective date.

Whilst (i) would mean the new provisions would have to apply retrospectively, as the consultation runs until 29 July, companies would not be reporting against the provisions until 2012 and FTSE 350 companies were encouraged to respond to Lord Davies' proposals on a timely basis, setting out their aspirational targets by September 2011, so consideration of this matter should already have begun by companies. However, as companies may not be able to comply for the whole of the period, the FRC would need to set clear expectations of what companies should have achieved in 2011 to enable them to comply, otherwise it will be for investors to assess explanations by companies about the measures that have been implemented throughout the reporting period.

However, there is an alternative option that has not been suggested in the FRC's consultation paper which would be to make the changes as soon as possible ie from accounting periods ending 31 December 2011 so that December year end companies would make their first disclosures against the amended Code in 2012. This would ensure the issue is addressed in the UK prior to the EU review of progress in March 2012 proposed in the European Commission's 'Strategy for equality between Women and Men 2010-2015'. Again if this approach were taken, the FRC would need to set clear expectations of what companies should have achieved in 2011 to permit compliance.

We consider that suggestions (iii) and (iv) above would result in unnecessary delay.

The FRC 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 senior executive talent – and if so, whether this should be done in the Code or elsewhere

We agree that it would be helpful to set out some of the key elements to be covered by a gender and other diversity policy, as guidance is always helpful when a new recommendation is introduced. However, we do not believe that this should be done in the Code as the Code should seek to avoid 'clutter'. This could be set out in additional guidance external to the Code, as has been done with the recent FRC guidance on Board effectiveness or the ICSA guidance on joining the right board. Additionally a voluntary code of conduct for executive search firms addressing gender diversity in boardroom appointments was published external to the Code on 22 July in response to another of Lord Davies' recommendations.

Any guidance could also provide some thoughts on pipeline and the wider pool to help companies to find a way of achieving the diversity targets they set.