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Dear Ms Woods

Proposed Revisions to the UK Corporate Governance Code

Thank you for inviting us to respond to your consultation on proposed revisions to the UK Corporate Governance Code ('the Code'). We welcome and support the objectives of the proposed Code reform. We share the FRC's view that changes are needed to reflect the changing business environment and ensure companies achieve robust levels of governance. I am writing on behalf of Marks and Spencer Group plc in my capacity as Group Secretary.

Overall, we are supportive of a shorter, sharper Code and one that addresses the issues of public trust and concern in business. We are supportive of the broader consideration of stakeholders and the potential for wider scope of the oversight and responsibility for board committees.

While we fully understand the intentions of the proposed Code and Guidance, we have a number of concerns around the potential consequences of some of the proposals. In particular, we are concerned about how these changes might impact on businesses and their boards, and how these might result in reduced competitiveness at a critical time of change for the UK. Although we broadly support the collective response to this consultation from the GC100, including their responses to the UK Stewardship Code proposals, we highlight our key reservations below.

'Comply or explain'

We would be particularly concerned by any potential erosion of the 'comply or explain', principles-based model. This model has been one of the great strengths of UK Corporate Governance and has provided a true point of differentiation for the UK as a global marketplace. Given that one of the stated aims of the revised Code "is to ensure the continued attractiveness of the UK capital market to global investors through Brexit and beyond", we believe it is essential that the spirit of 'comply or explain' remains at the heart of any revised Code.

We believe the adoption of a more prescriptive approach will drive investors and particularly the proxy voting agencies to adopt a binary checklist approach to departures from the Code, rather than encourage them to properly consider the rationale for the decisions being taken. We would therefore urge the FRC to retain 'comply and explain' at the core of the revised shorter Code, but ensure that further guidance is provided to companies and investors alike as to what 'explanations' would qualify as appropriate or acceptable, along with guidance as to the process or consultations required to support these.

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Directors obligations and Section 172

We support the inclusion of the reference to directors' obligations to shareholders and other stakeholders under s.172. However, as currently drafted, the proposed wording conflicts with, rather than enhances, the provisions of s.172 in terms of the priority given to long-term interests and to wider stakeholder groups. We would therefore recommend that any reference to s.172, mirror the legal requirement and wording of the Companies Act, so as not to provide any potential for misinterpretation of directors' duties or unwittingly widen the scope of the duties and provisions under the existing law.

Questions 7 & 8: Non-Executive Director and Chairman tenure and Chairman independence

Non-executive Directors

We support the view that nine years is an appropriate period of time for directors to be considered independent and are supportive of the "nine-year rule" being applied to the Chairman in addition to non-executive directors.

We also agree that any decision to appoint a director beyond nine years should be subject to robust challenge and that the directors should explain to shareholders the rationale for any such reappointment. We believe that the current Code already provides boards with sufficient impetus to provide this challenge and explanation. Furthermore, investors already have the ability to exercise their vote where this is unacceptable or insufficient. We are concerned that any 'hard-wiring' of the nine-year rule, as currently proposed in Provision 15, will result in poor governance decisions simply to satisfy the Code requirement, particularly for those companies for whom strict compliance with, or a box-ticking approach to, the Code is adopted by their investors.

Chairman

While we support the intention of recommending a maximum tenure for company chairmen, we do not feel that deeming the Chairman to be independent for the duration of his tenure, and therefore subjecting him to the Code's non-independence criteria, is the most appropriate or effective way to do this.

In the majority of cases, a Chairman cannot and should not be considered independent due to the unique, hybrid nature of the role. It is therefore inappropriate to subject him to the nine-year rule as if he were an independent director. We agree that the role of Chairman should be periodically refreshed and that the Code is well placed to provide boards with the necessary tools to support this process. However, we feel that this refreshment should be achieved not through the nine-year rule but through a completely separate mechanism, and one which is driven by a need for refreshment of the role and not a requirement for Chairman independence.

To this end, we would encourage the FRC to consider exploring a potential alternative means of providing assurance that a Chairman's extended tenure is in the best interests of the company and its shareholders. There could be a requirement, for example, that his reappointment be subject to formal consultation with shareholders, led by the Senior Independent Director or a member of the Nomination Committee, and that directors must report on the results of this consultation when recommending the reappointment and in their 'explanation' to shareholders. We believe this would provide appropriate assurance that due process has been followed and that the decision was grounded in a genuine desire to preserve value for shareholders, and not the result of a dominant Chairman or lack of succession planning. Provided the directors follow this process, we would suggest that any such reappointment should not constitute a breach of the Code.

Without this flexibility around Chairman tenure, we would also be concerned that directors' ability to ensure an appropriate pipeline for the role of Chairman will be limited by effectively removing the option to appoint from within the existing non-executive director pool. It may also impact on the external pool by deterring experienced and skilled non-executive directors from joining a board so as not to block their potential chance at Chairmanship at a later date.

Questions 9 - 11: Diversity and ethnicity

We agree that the changes proposed in Section 3 should lead to more action to build diversity. M&S recognises the benefit and value of diversity across the organisation. We are committed to the creation of an inclusive culture where our people reflect the communities we serve and where each person is given the opportunity to contribute and use their talents and abilities, experiences and skills to participate in delivering sustainable commercial opportunities. We believe that a diverse board, with a broad range of skills, backgrounds, knowledge and experience is a key driver of an effective board. Our policy seeks to ensure that diversity in its broadest sense, including gender, continues to remain a significant feature of the Board and our business.

Question 14: Wider remit for the Remuneration Committee

We recognise the potential for wider scope of the oversight and responsibility for board committees. However, we would recommend that the FRC guidance and the wording of Provision 33 allows flexibility for the delegation of any additional responsibilities to board committees to be determined by the Board.

We understand and support the FRC's intention to ensure that remuneration committees have a full understanding of workplace remuneration policies within their company. In fact, at M&S, we recently amended the terms of reference for the Remuneration Committee to broaden its responsibilities and oversight over remuneration policy, remuneration and reward beyond the Executive Director population as well as broader review and oversight of employee engagement and employee-related reporting. In addition, the terms of reference allow for our employee representative group to attend at least one meeting a year.

In conclusion, although we are supportive of the FRC's work to ensure that the Code continues to evolve and react to the changing landscape, we do not believe that the more prescriptive approach that is evident in certain areas of the draft revised Code, particularly those discussed above, would be beneficial for companies or their members in the long-term. Instead, we would encourage you to continue to fully utilise the inherent flexibility that the comply or explain principle affords companies in developing corporate governance structures that best meet the needs of their own businesses and stakeholders, and which is the foundation from which much of the strength of the principles-based Code is derived. This approach would help stewards and investors to listen and work with companies to ensure that they remain transparent and open in their explanations and demonstrate how due consideration has been taken to decisions to benefit their members as a whole.



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