

Chris Hodge
Financial Reporting Council
5th Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

12th March 2008

Dear Mr. Hodge,

2007 Review of the Combined Code:
Consultation on proposed changes to the code - December 2007

The CFA Institute Centre for Financial Market Integrity ("CFA Institute Centre") welcomes the opportunity to comment on the Financial Reporting Council's (FRC) consultation on proposed changes to the Combined Code (the "Consultation").

Regrettably we cannot support the proposals to allow individuals to chair more than one FT100 company, on the basis that they do not have the time to competently perform the assigned tasks. By illustration, the recent proposed appointment of Roger Carr to become Chairman of Cadbury's in addition to the Chairmanships Centrica, and Mitchells & Butler seems to show little regard for shareowner interests. Indeed a reduced gene pool of chairmen; a by-product of these proposals, creates its own systemic risk.

We also cannot support the proposal to allow chairmen to sit on the audit committee of smaller companies, because doing so threatens the committee's independence, which could have serious repercussions for shareowners.

We are concerned that the theme driving these proposed changes is a shortage of capable chairman and qualified non-executive directors. We feel that such a shortage exposes deficiencies in the work of nominations committees, who may only self-select from the existing non-executive pool rather than seek able people from outside. We believe that this is the situation that needs to be addressed, rather than retreat from a set of high standards that have proven to be perfectly functional over the last several years.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Charles Cronin'.

Charles Cronin, CFA
Head, CFA Institute Centre
Europe, Middle East and Africa.

+44 (0)20 7531 0762
charles.cronin@cfainstitute.org

The CFA Institute Centre¹ is part of CFA Institute². With headquarters in Charlottesville, VA, and regional offices in New York, Hong Kong, and London, CFA Institute is a global, not-for-profit professional association of approximately 95,000 investment analysts, portfolio managers, investment advisors, and other investment professionals in 133 countries, of whom more than 81,000 are holders of the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 135 member societies in 56 countries and territories.

Our detailed comments are set out as they are ordered in your consultation.

Provision A.4.3

We would not support the amendment of deleting the last line in this provision “No individual should be appointed to a second chairmanship of a FTSE 100 company”. We feel that chairing the board of a leading UK company is ‘³close to a full time engagement’. To change the Code would permit the precedent that could become the norm. Further the current constraint under the Combined Code, which has been in effect for a number of years, has not created a disruption in the supply of Chairman. We would add that there is nothing in this proposal that increases shareowner welfare, moreover all the gain is pecuniary and flows directly to the benefit of FTSE 100 Chairman. It is worth considering that proceeding with this change could have a detrimental effect on the pool of qualified non-executive directors, as the opportunities to advance to the position of chairman would diminish.

Our Corporate Governance manual, under its ‘Board Member Qualifications’ section advises that:

“Investors should determine whether Board Members have the qualifications the Company needs for the challenges it faces”.

This section further advises that investors should consider,

“Whether the Board Members serve on a number of Boards for other Companies, constraining the time needed to serve effectively”.

The implication is that Board Members are not capable of in-depth evaluations of the issues affecting the Company’s business if they are unable to devote sufficient time to

¹ The CFA Institute Centre develops, promulgates, and maintains the highest ethical standards for the investment community, including the CFA Institute Code of Ethics and Standards of Professional Conduct, Global Investment Performance Standards (“GIPS®”), and the Asset Manager Code of Professional Conduct (“AMC”). It represents the views of investment professionals and investors before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

² CFA Institute is best known for developing and administering the Chartered Financial Analyst curriculum and examinations and issuing the CFA Charter.

³ Paragraph 12.18 ‘Review of the role and effectiveness of non-executive directors’ Derek Higgs 2003

their study. In conditions where non-executives have not dedicated adequate time to scrutinise senior executives, they will inevitably depend on their unchallenged input. Such conditions do not serve the shareowner interest.

As a complimentary partner to the Chief Executive, the Chairman of an FTSE 100 company has to be able to process a wealth of operational and financial information that a company of that size and status will create. We find it surprising that anybody who is committed to this role, and to the interests of shareowners, should feel they are able to do the same job again for an organisation of similar standing.

We recognise that there are some inconsistencies in the current Code which are difficult to address. There are no restrictions on chairing major Continental companies, or in assuming other consuming roles such as in the voluntary or public service sectors. We feel this is an important consideration that must be managed by the nominations committee.

Provision C.3.1

We cannot support the amendment that would permit chairmen of smaller companies to sit on, but not chair, the audit committee, provided that they were considered independent on their appointment as chairman. Post appointment the chairman of the board generally becomes less than independent, to paraphrase Sir Derek Higgs, due to the high degree of involvement with executive management⁴. Our corporate governance code states that:

“The audit committee’s primary objective is to ensure that the financial information reported by the Company to Shareowners is complete, accurate, reliable, relevant, verifiable and timely”.

Our code goes on to state:

“If the Independence of the audit committee is undermined, it could compromise the integrity of the financial reporting process and raise doubts about the credibility of the Company’s financial statements. Misrepresentations of, or other distortions about, the Company’s performance and financial condition ultimately could have a detrimental affect on the Company’s share valuation”.

Independence and suitable qualifications are paramount requirements for an effective audit committee. The Sarbanes Oxley Act requires that all members of the audit committee are independent, and this is supported by Sir Derek Higgs in his report⁵. As you will be aware analyst scrutiny of smaller companies is less intense than found in the FT100 companies. While exposure of an audit failure in a small cap stock would not lead to a market failure, the fact that independence standards could be relaxed in this group would taint the market, and could over time raise the cost of capital.

⁴ Paragraph 5.9 ‘Review of the role and effectiveness of non-executive directors’ Derek Higgs 2003

⁵ Paragraph 9.4 ‘Review of the role and effectiveness of non-executive directors’ Derek Higgs 2003

Revised Preamble

The suggestion to expand the preamble to include reference that ‘...*good governance should support wealth creation and entrepreneurship as well as protect shareholder value, and to encourage companies to make relevant company specific disclosures*’, has many attractive features, but blurs the distinction between the rationale behind good governance, what is good governance, and the need for sound ethical conduct. We would prefer to see a statement focusing on the purpose of good governance such as:

“Good governance protects shareholders from the misplaced priorities of Non-Executive Directors and the manipulation and misappropriation of Company resources by Executive Directors and other groups who may try to exercise significant and improper influence over the Company’s affairs”,

A statement describing good governance:

“Good governance supports wealth creation and entrepreneurship in addition to protecting shareholder interests. It also should encourage companies to make regular, frequent, substantive, complete, accurate, relevant and timely disclosures about its financial condition, performance, and other relevant governance matters.”,

and a separate statement recommending that the executive directors adopt a code of ethics that captures the ethical sentiments expressed above.

Overlap with FSA Corporate Governance Rules

We support the proposal of adding foot notes in the updated Combined Code that link the Code with the minimum requirements under the new FSA rules⁶.

12th March 2008

A handwritten signature in black ink, appearing to be 'S. J. P.', written in a cursive style.

⁶ New rules needed to implement the corporate governance requirements in the 4th and 8th Company Law Directives.