



14 April 2010

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Mr Seamus Gillen
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By email: policy@icsa.co.uk

Dear Seamus

Review of the Higgs Guidance

ICAEW welcomes the opportunity to comment on the consultation paper *Review of the Higgs Guidance: improving board effectiveness* published by The Institute of Chartered Secretaries and Administrators (ICSA) in March 2010.

ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council (FRC). As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

ICAEW has participated in consultations regarding the Combined Code/UK Corporate Governance Code and plays an active role in the development of corporate governance in the UK and internationally.

This response has been drafted after consultation with ICAEW's Corporate Governance Committee which includes representatives from the business and investment communities. We have also received input from our Special Interest Group representing non-executive directors (NEDs) and in particular in respect of those areas which would impact NEDs most directly. We have highlighted some general observations below in response to the consultation questions.

GENERAL OBSERVATIONS

It is essential that guidelines are in place to support effective governance in all companies and where gaps in guidance have existed that these are closed.

We believe that guidance associated with the UK Corporate Governance Code is vital as the provision of clear and meaningful guidance to companies and their advisors will produce real improvements in

governance. The guidance needs to avoid prescription but should seek to provide practical help to companies which is flexible and sensitive to the differing and varied needs of companies.

Given its role in compiling the existing guidance, ICSA is in a unique position to deliver revised guidance and we are fully supportive of the work and its stated aims. We note that there will be a further consultation in June with comments to be submitted by the end of August with completed guidance being submitted to the FRC in October. We welcome the opportunity to comment on this and future consultations as they arise.

As a general observation it would be useful if all guidance on the UK Corporate Governance Code (the revision of Higgs, Turnbull and Smith) were eventually produced in one document. We believe that this would assist boards, directors and their advisors and provide a coherent and consistent set of good practice guidance for practical reference by both UK and overseas users.

RESPONSES TO CONSULTATION QUESTIONS

Q1: Do you agree with the purpose of the guidance as set out on page 4 of this paper?

We are in agreement with the stated purpose of the guidance and agree that practical guidance could be most effectively linked to the concept of enhancing board effectiveness. The guidance should be clear that it is guidance only, that boards are not required to follow the guidance and that it is merely intended to assist boards and their advisors when implementing the relevant principles and provisions of the Code.

Q2: Do you agree that the paper has identified the right areas where the existing guidance could be enhanced?

We agree that the five areas identified to build board effectiveness are key areas. Structuring the proposed new guidance around these headings is sensible.

However, we feel that a sixth heading on the role of the Chairman would be useful. The role of the Chairman is of such importance that we feel that it could justify a section devoted to the role rather than being included under the first heading.

The purpose of the board (1.1)

We would urge that the revised guidance on the purpose of the board does not create any additional responsibilities over and above those already contained in the existing legal and regulatory framework. We note that strategy development is flagged and we think this is an area where additional practical guidance could be beneficial. We note the aim of the guidance to reassert the distinction between governance and operational matters: practical examples of this would be extremely helpful.

The different roles in the boardroom (1.2)

We agree that after the Sir David Walker Review, greater emphasis on the role of the Chairman, Senior Independent Director (SID) and Non-Executive Director (NED) is required and that updating the existing Higgs Guidance is essential in these areas to reflect time commitment, continuing development, information provision and support. Practical examples would be the best approach in this area.

We fully support the inclusion of executive directors in the guidance on different roles as this is an area where practical guidance could be extremely useful to the operation of boards.

It would also be useful in this section to cover the roles of those principally advising the board: General Counsel; Company Secretary; Chief Risk Officer and Internal Auditor.

Board composition (1.3)

We welcome the review of independence criteria and the focus on the need for a properly balanced board as a fundamentally important aspect of delivering high performance. It is the board as a whole which should be viewed in the context of balance not merely or exclusively those individuals serving on a board.

Greater diversity on boards is a key means to reducing 'group think' which has been identified as a major problem in some boards. Board members who bring different experiences to the board will increase opportunities for diversity of thinking. Diversity on boards can also promote greater and more effective challenge within the boardroom and increase overall board independence.

Companies could be asked in the guidance to consider the benefits of extending the scope and diversity of the pool of talent available for future board appointments.

We look forward to seeing how the guidance will offer insights into the identification of appropriate psychological traits.

Appropriate boardroom behaviours (1.4)

We welcome the identification of factors that would allow for the development of a culture of constructive and robust challenge in the boardroom. However, these factors can only be illustrative in nature and we do not think it sensible to attempt to codify behaviours. As mentioned above we feel that looking to create greater diversity within the boardroom would lead to increased and more effective challenge.

The importance of influencing skills is something that could be covered in the revised guidance. Constructive influencing skills are perhaps as important as the concept of challenge within the boardroom. Indeed, good influencing skills are an invaluable advantage when working in a collegiate team and hugely effective when employed constructively. It would help to articulate this aspect when making board appointments.

Skill levels in the boardroom (2)

It is right and sensible to include more guidance on board induction and continuing 'in position' training: in this regard the existing Higgs Guidance could be usefully updated and expanded. Much has been said about induction and on-going training. It is worth developing robust guidance in this area as boards and market participants generally could gain much from both increasing effectiveness and also greater disclosure of practices.

We are fully supportive of the need for greater guidance on board evaluations as there is much variable practice in this field and boards of directors would certainly welcome greater practical guidance. In particular, guidance on how the board evaluation can be reported in annual statements would be welcome as there are confidentiality and conflict issues which need careful thought.

The issue of the quality of evaluation is also one where guidance would be useful especially on the provision of internally facilitated evaluations which can be as useful and effective as externally facilitated evaluations provided that certain quality aspects are maintained.

Board decision-making (3)

We note that the outcomes of other consultations and reviews are awaited. However, it would be useful for boards and their advisors to have all guidance, when finalised, contained within one document.

We welcome the, to be updated, guidance on the Nomination Committee process. Board nomination mechanisms are fundamental in delivering strategically important board outcomes. Historically, not so much emphasis has been placed on Nomination Committees and so more practical guidance in this area would be extremely beneficial.

The individual on the board (4)

It is at the pre-appointment stage when boards and individual directors need to make the right decisions about the impending appointment. Clarity, transparency and good due diligence all play their part in equal measure. Guidance in this area would be useful but we urge caution on ensuring that potential candidates achieve 'commitment to, and alignment with, the board's practices and culture'. This may simply produce 'more of the same' which is fine for an effectively functioning board but not for a dysfunctional one.

We welcome the production of an up-to date review of former Schedule B of the Combined Code. It is important that such a list is kept under regular review.

Accountability (5)

Within the context of existing regulatory mechanisms we believe that it is for each company to establish how best to engage with their members. Whilst we think that personal reporting on governance by the Chairman as the leader of the board is a good idea, we do not believe that this should be prescriptive as it is the whole board that is ultimately responsible.

Moreover, prescribing a set of disclosure obligations (however helpful that appears to be) may simply lead to more boiler-plate not less. We believe that it should be for each company to decide what method of disclosure suits it best.

Q3: Are there other areas which the guidance should look at?

While we accept that board behaviours are the key that will enable effectiveness, we feel that board processes are extremely important. Some guidance on best practice for board processes would be useful for many boards, especially smaller ones, to cover such issues as setting agendas, timings, terms of references also governance frameworks, and the provision of information to the Board.

In view of the many changes that will happen as a result of the introduction of the Stewardship Code it would also be helpful to have some guidance on best practice shareholder communication; what is meant by shareholder communication and what responsibilities companies and shareholders have in relation to shareholder communication.

Finally it may be useful to consider whether there are any monitoring mechanisms available to a Chairman to ensure the effective and smooth running of the board.

Please contact me should you wish to discuss any of the points raised in this response.

Yours sincerely

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