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Dear Nigel

Effective corporate governance (Significant influence controlled functions and the Walker review)

ICAEW welcomes the opportunity to comment on the consultation paper *Effective corporate governance (Significant influence controlled functions and the Walker review)* published by the Financial Services Authority (FSA) in January 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 plays an active role in corporate governance thinking in the UK and internationally. This response has been drafted after consultation with the ICAEW 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) 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

We are fully supportive of the FSA supporting the delivery of Sir David Walker's recommendations alongside the FRC and their work on the UK Corporate Governance Code and the Stewardship Code. It is essential that the necessary regulatory foundations are in place to support effective governance in regulated firms and that where gaps have existed that these are closed.

We believe that the published guidance associated with the proposals is vital. It is the provision of clear and meaningful guidance to firms on detailed rules that will produce the best results with real improvements in governance being truly enabled by good guidance.

We fully support the long-term aim of being able to assess the capability of individuals in key roles more effectively both at the point of approval and during their careers within regulated firms. We also support the need for a consistent approach to all individuals exercising significant influence over regulated firms even though this will extend the regime to individuals who exert significant influence on a UK-regulated firm who are based outside of the UK-regulated firm.

However, we are firmly of the view that the responsibility to appoint appropriate people for key roles rests with both the nominations committee of the board and the executive management and that it is the firm's own governance processes with respect to individuals that is of primary importance. That is why we believe that any guidance that the FSA can give will be more effective than hard rules.

Additionally, in terms of continuing performance within boards and regulated firms the FSA could and should play a leadership role in the provision of training and guidance to assist those who are performing controlled functions to perform their responsibilities more effectively not only by the provision of sectoral updates but also by more regulatory updates. In this way the FSA could become a world class regulator and standard setter which the rest of the world could follow and emulate.

We note that the FSA has undertaken to work with regulated firms and recruitment agencies earlier in the process to provide assurances around probity early in the process. We view this as being a key undertaking to ensure that competent individuals are not deterred from applying to become board members.

With regard to enhancing the approved persons regime to include two new roles (those responsible for the protection of clients' assets/money and a Business Officer Role) as suggested by the Treasury consultation paper issued on 15 December 2010 we are in favour of extending the approved persons regime to encompass these roles. We note that any developments in this area of client assets will be subject to a separate consultation.

RESPONSES TO CONSULTATION QUESTIONS

Q1: Do you agree with our proposals to separately identify certain key roles that are performed within the CF1 (director) CF2 (NED) or CF28 (systems and controls) controlled functions?

We agree with the proposals to separately identify key roles within the director and NED definitions and believe that this will provide greater emphasis on key roles such as chairing board committees which hitherto has not had sufficient regulatory acknowledgment in controlled function terms. We support the splitting of CF28 into separate controlled functions of finance, risk and internal audit: these disciplines are very different functions and justify a distinct function categorisation. Greater transparency will be achieved by splitting CF28 as proposed and this additional information could lead to a greater degree of knowledge about how risks are handled within firms.

Q2: Are there any other key roles we should be identifying?

The role of chairman of the nominating committee is not identified as being a significant influence controlled function. Is there any reason why this is not included as the need for succession planning and nominations is fundamental?

Q3: Do you agree that we should separately approve all candidates for a systems and controls function, even if they have, or are seeking, approval to perform a governing function?

We welcome the re-introduction that the finance, risk and internal audit functions be split into distinct controlled functions as all three require specific technical competencies that are distinct from both each other and from general governing controlled functions. We therefore agree that these should be separately approved. We believe that this will enable the FSA to get a clearer picture and better understanding of the governance structures within regulated firms.

Q4: Do you agree that we should automatically grant the new controlled functions to individuals already performing the relevant role within their existing approvals?

We agree that it would be unnecessarily cumbersome to have individuals seek additional approval for roles that they are already undertaking. It is a sensible and cost effective course of action to allow firms to submit a notification (on a specific notification form contained within the final rules) identifying which of their approved persons already perform any of the new controlled functions.

Q5: Do you agree that a phased approach of between 3 and 12 months is sufficient for the notification process, and that the Remuneration Code provides an appropriate basis for this phasing?

We agree that a phased approach of between 3 and 12 months is sufficient for the notification process and that the scope of the Remuneration Code provides a good basis for the phasing.

Q6: Do you agree that we should extend the proposed CF00 (parent entity SIF) to apply irrespective of the corporate status of the UK subsidiary?

We believe that the corporate status of the UK-regulated firm is irrelevant in considering whether the persons exercising influence over the entity should be approved. We therefore agree that the FSA should extend the proposed CF00 to apply irrespective of the corporate status of the UK entity.

Q7: Do you agree that we should extend the proposed CF00 (parent entity SIF) regime to apply to regulated firms whose parent entity is also FSA-authorized?

We understand the technical arguments advanced to extend the proposed CF00 regime to apply to regulated firms whose parent entity is also FSA-authorized. However, we are concerned that this will increase applications considerably for individuals who are already authorised (albeit for a slightly different function) at a parent company and may simply create a paper chase of applications and an unnecessary compliance burden. The transitional relief in this regard if the extension is implemented will be crucial to assist regulated firms in dealing with the additional compliance burden.

Q8: Do you agree that these transitional periods are sufficient?

The three month transitional period for firms to identify existing approved persons in a parent who will require approval to perform a significant influence controlled function in a subsidiary is sufficient in our view.

A transitional period of six months from the date rules are published for firms to identify individuals in their authorised parent who are not currently approved in a governing function is a practical suggestion.

Q9: Do you agree that it is appropriate for us to extend CF29 to UK branches of incoming EEA banks accepting retail deposits?

We agree that it is appropriate to extend CF29 to UK branches of incoming EEA firms accepting retail deposits.

Q10: Do you agree that our proposed guidance on compromise agreements is useful in clarifying the current position?

We are not supportive of any measures that would interfere with the confidentiality which exists between employee and employer in existing termination arrangements. We believe that the guidance should be split between existing contracts and future compromise agreements that firms may wish to

make. The guidance seems to encourage firms to breach existing contracts which were entered into in good faith. We do not find the guidance very helpful in this regard.

Q11: Do you agree with our proposed guidance on the time commitment required for chairman and NEDs?

We believe that it is a matter for the firm and the individual to demonstrate that they have given due consideration to the amount of time required for the role and that the individual has the capacity to deliver it. We believe that the proposed guidance on the time commitment required is helpful.

Q12: Do you agree that we should delete the guidance in SYSC 2 and 4 on NEDs responsibilities?

We are not in agreement to the deletion of all of the guidance in SYSC 2 and 4 on NEDs' responsibilities. The guidance in SYSC 2.1.2 that is proposed for deletion is extremely useful in highlighting that the role of a NED will vary from firm to firm. We accept that it may be useful to delete the guidance on NED liability. We think it is important to remain realistic about the nature of non-executive positions and to acknowledge the scope of their role and realistically assess what they can achieve. It was acknowledged by Sir David Walker in his final report in recommendation 3 that some NEDs might spend less time than others. We agree with the key message that NEDs have a pivotal role in the active governance of firms but believe that this must be set in the context of a unified board concept. We do not see how the current helpful guidance could be misinterpreted.

Q13: Do you agree that we should amend our rules to reflect the introduction of the new Corporate Governance Code?

We agree that the rules should be amended to reflect the new UK Corporate Governance Code.

Q14: Do you agree with the content of our proposed guidance on board risk committees?

The guidance is helpful in that it makes clear that a firm's governing body is ultimately responsible for risk governance throughout the business and that it should be for each board to consider establishing a governing body risk committee to provide focussed support and advice on risk governance.

Q15: Do you agree with the content of our proposed guidance on CROs?

We welcome the fact that that the FSA have not sought to limit the scope of the guidance to specific firms and that there is an acknowledgement that for some firms a CRO may be an unnecessary or disproportionate measure.

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

Yours sincerely

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