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Nigel Peace, Esq.,
Secretary,
Committee on the Financial Aspects
of Corporate Governance,
P.O. Box 433,
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Ach'd

Dear Mr. Peace,

CORPORATE GOVERNANCE

Whilst agreeing with the majority of the points expressed in the Draft Report of the Committee on the Financial Aspects of Corporate Governance and supporting much of the proposed Code of Best Practice there are a number of issues on which we would like to comment:-

1. The report appears to suggest that executive and non-executive directors fall into two distinct categories with different responsibilities. In law and in practice this is not so - the board is the source of power and authority within a company and the directors, collectively and individually, are responsible for ensuring that the company's affairs are conducted in an appropriate manner and comply with all legal requirements. Given that there is an appropriate balance of directors on the board and that strong and effective audit and personnel committees of non-executives have been appointed it is not necessary, indeed it is undesirable, to establish a grouping of non-executives with an appointed leader as a counter to the chairman and/or chief executive. We therefore recommend that in paragraph 4.6 of the report and in item 1.2 of the Code the words "Where the chairman is also the chief executive" and "with an appointed leader" should be removed.
2. The need to seek independent financial or legal advice in furtherance of their duties as directors is not limited to non-executives and the right of access should be extended to all members of the board. In item 2.4 of the Code the words "non-executive" should be replaced by "all" and paragraph 4.12 of the report should be amended accordingly.

3. The Accounting Standards Board's proposals for Operating and Financial Reviews are fundamentally flawed in a number of areas and until an acceptable format for OFR's is developed the second sentence of paragraph 4.44 of the report should be removed.
4. Directors are responsible for interim financial reports and should ensure that they are prepared with the same degree of care and follow the same accounting policies as annual accounts. Properly constituted audit committees carrying out their roles effectively are best placed to provide reassurance on this matter as their members will be familiar with companies' performance trends, will know of all major transactions and will be in a position to assess the accuracy and balance of financial statements. External auditors will be unable to make any worthwhile judgement or comment without carrying out detailed audit work, which will add considerably to the costs that companies have to bear. The recommendation that interim financial statements should be reviewed by the auditors, paragraph 4.47, should be withdrawn.
5. There is a thread running through the Committee's recommendations of increasing the role of auditors in the corporate governance process which, in a number of instances, extends their involvement into areas of judgement that are beyond their training or competence. The responsibilities of auditors are clearly enshrined in law and should not be extended without changes to the relevant legislation. The Committee's recommendations that auditors should review the directors' statement of compliance with the Code, paragraph 3.10, should be withdrawn as should the recommendations that the auditors should report on the directors' statements regarding internal control, paragraph 4.26, and the ongoing nature of the business, paragraph 5.23. All references to new responsibilities for auditors contained within the report and the Code should be deleted.
6. All parties involved in the corporate governance process should follow the same principles of conduct and be subject to the same degree of accountability and disclosure. Given that the annual audit is one of the cornerstones of corporate governance we believe it is essential that all accounting firms providing audit services to public companies should be required to publish annual reports and accounts with the same level of disclosures as listed companies and should comply with all aspects of the Code. Until auditors are seen to conduct their affairs with the same standards of corporate responsibility and openness as they advocate for their clients it will not be possible for directors, company shareholders or the public to have confidence in the quality, integrity and financial viability of the profession.

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7. There appears to be a contradiction in the Committee's views on shareholder communications in that it endorses the regular contact between companies and their major shareholders on significant matters such as board strategy and structure, paragraph 4.50, whilst at the same time stating that all significant statements must be made publicly so they are available to all shareholders, paragraph 6.9. It is clearly not always possible to do both and the Committee should either clarify its intentions or provide guidance on how companies should operate in practice.

The Committee's report should recognise that differing company situations may demand different board structures and what is right for one company is not necessarily right for others. Similarly individual company's needs change over time and their compliance structures must reflect what is appropriate to their current stage of development and the composition of their board. Ultimately the directors are responsible to the shareholders for the management of the company and the conduct of the business. The most effective means of providing the necessary checks and balances in the overall structure of corporate governance is the establishment of properly constituted committees of independent, competent directors acting conscientiously in the interests of the shareholders in monitoring the operations of the board.

Yours sincerely,



Sir George Russell
Chairman