CAD-02267

Note of key points arising from meeting between Martin Scicluna, Martyn Jones and Sir Adrian Cadbury on 22 April 1993

1. Bodies which could be contacted to assist the distribution of the booklet 'Setting the Agenda'

   - The Stock Exchange
   - The CBI
   - The Institute of Secretaries

2. Body which could be usefully approached for an Auditing Committee Seminar - The Institute of Chartered Secretaries (MEJ knows President, Joan Bingley).

3. Corporate governance reports by directors and Touche Ross on Coates Viyella warmly welcomed by Sir Adrian. Dixons and Grand Met were also identified as having made good disclosures.

4. **Going Concern**

   It is important that enough support for the guidance is given by the corporate sector. There is a need to put pressure on the 100 Group. Sir Adrian undertook to talk with Hugh Collum. Sir Adrian will also contact Andrew Liekeman who monitors current developments on behalf of the Cadbury Committee.

5. **Internal Control**

   The Institute's recent discussion paper on audit reports on internal controls was welcomed by Sir Adrian as a useful step to providing debate. The draft guidance for companies on internal control should be split into separate volumes on the principles and on suggested detailed criteria. Volume I on the principles should be "sold" first. A single volume incorporating principles and detailed criteria would make it easier for companies which are hostile to reject the draft material on grounds that it was a deluge of material and too detailed.

6. An offer was made to Sir Adrian to assist his Committee in any way which would be of help.

Distribution

Sir Adrian Cadbury
Martin Scicluna
Henry Gold, Institute of Chartered Accountants
Richard Chinn, Institute of Chartered Accountants
Clive Letchford, Institute of Chartered Accountants
Des Wright, Institute of Chartered Accountants

CAD-02267

CFACG(93)2ND Meeting

COMMITTEE ON THE FINANCIAL ASPECTS

OF CORPORATE GOVERNANCE

Martin Taylor.

The next meeting of the Committee will be held in the East Oak Room at the Bank of England, Threadneedle Street, London EC2 on Thursday, 3 June, beginning at 4.00 pm.

Rolling contracts. — ISC should take up? NED directors contracts. Annual rolling or 3 yr. contracts. Successor body. Views developing. Increase transparency.

Agenda

1. Apologies for absence.
2. Minutes of previous meeting held on 3 March 1993, already circulated.
3. Questions arising on interpretation of the Code of Best Practice CFACG(93)3.
4. Joint Working Party draft guidance for directors of listed companies on going concern - CFACG(93)4.
5. Directors' pay - CFACG(93)5.
6. Compliance Statements - Stock Exchange Listing Requirement - CFACG(93)6.
7. Any other business.
8. Date of next meeting - 4.00 pm on Thursday 9 September 1993.

Gina Cole
Secretary
21 May 1993

CFACG(93)3

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

INTERPRETATION OF THE CODE OF BEST PRACTICE

Note by the Secretary

BACKGROUND

1. Questions on interpretation of the Code continue to arise. The majority of them handled without difficulty. Occasionally a more complex point is raised, and the Committee may wish to discuss and take a view on the following three cases.

Legal Effects of the Code of Best Practice

2. The Committee were approached by the solicitors Clifford Chance for advice on the exact legal status of the Code of Best Practice. Whilst it is accepted that the Code in itself does not have any legal status, in that there is no legal obligation on listed companies to comply with it, Arthur Russell has pointed out that the Code, could, if successful, have legal effects. In the event of widespread compliance, the standards set by the Code might be accepted by the courts as evidence of the general standard to be expected of companies and directors. This then gives rise to the question of whether, if the Code is subject to legal interpretation, could it continue to stand in its present form?

Code adopted customary in practice. Listed cos. to whom it is directed. Code wld. not require to be interpretable form. As standards adopted in practice could be illustrative

Executive Directors' Pensions

3. Paragraph 3.2 of the Code states:-

> "There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest paid UK director, including pension contributions and stock option. Separate figures should be given .....".

A submission has been made to the Committee (Annex 1) by Mr A F Smallbone of the Pension and Population Research Institute that the use of the word "contributions" in this context is incorrect. Whilst the style of Mr Smallbone's correspondence makes it slightly inaccessible, he points out that no contributions to a pension fund are made with respect to any particular member of a scheme. In

some years no contributions at all may be made, if a pensions "holiday" is being taken. In his reply to Mr Smallbone of 16 March, Sir Adrian Cadbury suggests that perhaps the word "entitlements" should perhaps have been used in place of "contributions". Paragraph 4.40 of the Report itself, referring to board remuneration, also refers to "pension contributions".

4. If the Committee takes the view that the use of the word "contributions" could lead to ambiguity, then it may wish to consider whether there is a need to issue any further guidance to companies. Alternatively, we could wait and see how companies tackle this area of compliance in reports and accounts which are published for years ending after 30 June 1993. If it becomes apparent that they are taking a very narrow , technical view of the wording, then one option would be to signpost this as an area for action by the Committee's successor body in June 1995.

Directors' Terms of Office

5. A detailed query has been put to us by Allen and Overy, on directors' terms of office, and particularly how to ensure that a director relinquishes his office at the end of his fixed term. They point out that at present, the only effective way to ensure that the director goes at the end of his term is for the *shareholders'* resolution appointing him to specify the period of his office or to rely on some provision in the company's articles. The correspondence is copied at Annex 2. The Committee may wish to discuss.

Gina Cole
21 May 1993

Don't go beyond law.
Definition extremely complex.
Support.
Understable followed.

Annex 1

Copies of correspondence between Mr Allan Smallbone, Pension and Population Research Institute, and Sir Adrian Cadbury.

Pension
And
Population
Research
Institute

PAPRI
35 Canonbury Road
London
N1 2DG
Tel: 071-354 5667

MEMORANDUM

To: The Cadbury Committee

From A F Smallbone

Date 6th May 1993

1. Thank you very much for your letter 16th March 1993. I believe it is essential, if you wish to substitute the word "entitlements" to add the words "values of.." first.

2. Otherwise some companies may attempt to pass off "..directors belong to a contributory pensions scheme of a conventional defined benefit type. Individual entitlements cannot be quantified until pay in the final year before retirement is known.." types of response as complying with the spirit of page 59 paragraph 3.2.

3. If I may say so with respect, I believe too that many directors may be very anxious indeed that the word "contributions" should not be interpreted in any way which might indicate just how costly to shareholders, and to the tax payer at large, can be the prospective pensions of those who least need such huge subsidies (one man's tax privilege being another man's tax burden always).

4. Most particularly would this be likely to be the case if pensioners, some of whom might also be shareholders, had been informed that the costs of fully indexing the purchasing power of their own pensions would be prohibitive, and/or that the company had taken a pensions contribution holiday, or holidays.

5. The attachment shows just how variable can be the relationship between pay and performance - an issue which is also the subject of an article in the March 1993 edition of the "British Journal of Industrial Relations". Since pensions are without doubt pay, it is essential there should be real transparency on this issue, I hope you will agree.

6. In the light of the wide variations, and the uncertainty over how to achieve the objective of "..full and clear disclosure.." as discussed in our correspondence, may I suggest that it might be very helpful to seek the views of the company secretaries of the three entities mentioned on the attachment, as examples? They may have already considered the issues.

7. In the case of one of the companies, it is disclosed that while one individual's basic pay increased only 7.6% (although that translates into a capital cost somewhere around £450,000 if you apply the formula suggested in paragraph 9 of my 16th January memorandum) there is a further amount by way of performance related reward. Some or all of that may be pensionable too. Has the committee considered that possibility and whether any part of such costs might be defrayed by the employer?

8. When writing to that company, it might be helpful to enquire specifically concerning that matter, if I may suggest it. I shall be most interested to learn what view your committee takes of all these issues, if I can possibly trouble you to let me know.

COMMITTEE
ON
THE FINANCIAL ASPECTS
OF CORPORATE GOVERNANCE

c/o The London Stock Exchange
London EC2N 1HP
Tel: 071-797 4575
Fax: 071-410 6822

16 March 1993

Mr A F Smallbone
30 Temple Fortune Lane
London NW11

Dear Mr Smallbone,

Thank you for your letter of the 8th and I am not sure that I did see your earlier memorandum, but that may be my oversight rather than the Stock Exchange's. I hope, in return, that this letter will reach you but there was no address on yours to me and the address in the photocopy of your letter to The Times was incomplete.

I fully understand the point you make and, on reflection, a word such as **entitlements** would have been more appropriate than **contributions**. I would personally expect companies to interpret **contributions** in a general, rather than in a technical sense, but I accept that there is room for confusion here.

One of our objectives in keeping the Committee in being until we hand over to our successors is to pick up points of difficulty which should be considered by those who will review the Code of Best Practice and its working. Equally, we are ready to clarify what we meant by any of our recommendations if there is doubt as to how they should be interpreted. I will make sure that the issue which you raise is on our agenda and I am grateful to you for pointing it out.

As a matter of clarification, **contributions** occurs in 4.40 and not in 3.2.

mistake. ✓
2. in the Code
→ refer to "contributions"
I sent a further note
3/93. acknowledging this.
AC

Thank you for writing.

Yours Sincerely

Adrian Cadbury

Pension
And
Population
Research
Institute

PAPRI
35 Canonbury Road
London
N1 2DG
Tel: 071-354 5667
Fax: 071-226 6601

MEMORANDUM

To The Cadbury Committee From A F Smallbone

Date 8 March 1993

1. I refer to my memorandum of 16th January, in which I raised with you the inappropriateness of the word "contributions" in paragraph 3.2; did it reach you safely?

2. It is the nature of a "final" pay scheme that members have no rights to the money in the fund, and that no contributions are made by the employer to that fund with respect to any particular member. In some years no contributions at all may be made, a holiday being taken.

3. When employers do make contributions, those relate to the overall costs of the scheme, not to the costs of benefits (contingent or in payment) for any individuals, while payments actually made may differ significantly for Company A compared with Company B, even if liabilities are identical (see OPB report Cm 573 paragraph 15.14).

4. Nevertheless, the drain on Shareholders funds can be great, and the hidden increase in value of some individuals' pensions wholly unrelated to the worth of the services given, largely making nonsense of the concept of performance-related pay.

5. Left alone the word contributions in paragraph 3.2 may give rise to a variety of very misleading answers and the need for some corrective guidance, soon, is becoming increasingly urgent in the light of paragraph 2 on page 54.

Pension
And
Population
Research
Institute

PAPRI
35 Canonbury Road
London
N1 2DG
Tel: 071-354 5667

MEMORANDUM

To The Cadbury Committee

From A F Smallbone

Date 16th January 1993

1. Paragraph 3.2 on page 59 of the report is right to identify pensions as an issue where there should be full disclosure, but mistaken in using the word "contributions". Furthermore, full disclosure should be made with respect to each director by name in all accounts, not simply the chairman etc.

2. A bachelor who dies in office may never draw any pension, but a death benefit may be payable (of 4 times salary say). Pensions and death benefits are different, and should be differently valued in accounts if the (admirable) spirit of paragraph 3.2 is to be translated into worthwhile terms.

3. Valuation of the prospective death-in-service benefit for an individual (aged X say) should present no problems at all. There is no need for absolute precision and term assurance rates in the open market will be readily available to all auditors.

4. Valuation of pensions rights is less easy. A simple example illustrates the problem. In the Times last July it was reported that a Chairman's pay had been increased by some £270,000 to a total of £846,000. The report added that he was aged 60, and it was believed that he intended to retire shortly with his pension based on his final salary.

5. If it is supposed that the report was accurate, what was that pension "worth"? It is suggested that there should be a two stage approach, "before" and "after".

6. Suppose that, before the most recent pay rise, he had accumulated 19 years service and was a member of a 30ths scheme. Making no allowance for future indexing etc., he would seem to have had in prospect a pension of 19/30 x 546,000 = £364,000.

7. Auditors should have readily available the costs of buying an annuity for such an individual, and therefore the costs of acquiring the "extra" as a result of the £270,000 increase.

8. It would be perfectly acceptable, I suggest, simply to recommend that all auditors subtract last year's pay level from this year's, and multiply the answer by 10 for the purposes of compliance with paragraph 3.2. If finance directors of the company being audited object to that, then there is no reason at all why they should not justify their objections and the auditors will no doubt know exactly how to go about the problem.

Annex 2

Correspondence from Allen and Overy on non-executive directors with fixed term contracts.

ALLEN & OVERY

9 Cheapside
London EC2V 6AD

Tel: 071-248 9898
Fax: 071-236 2192
Telex: 8812801

DX No 73

IGS/SSM/SJA

8th April, 1993

Ms Gina Cole
Secretary to the Cadbury Committee
c/o the London Stock Exchange
London
EC2P 1HP

Dear Ms Cole

Report of the Cadbury Committee on Corporate Governance

Further to our telephone conversation earlier this week I enclose a copy of a letter advising on the appointment of a non-executive director for a fixed term. The letter addresses the problem of how to ensure that a director relinquishes his office at the end of his fixed term. As you can see I have blanked out the details of the recipient of the letter.

An alternative approach to that envisaged in the enclosed letter would be to appoint a non-executive for a term expiring on the date that he is required to retire by rotation under the articles of the company.

It would be useful to hear if the committee has any views on this area.

Yours sincerely

Ian Stanley

enc

ALLEN & OVERY

9 Cheapside
London EC2V 6AD

Tel: 071-248 9898
Fax: 071-236 2192
Telex: 8812801

DX No 73

PH/SAH

26th March, 1993

Dear

Corporate Governance

In the meantime, you may be interested in the thoughts which we have had on the interesting point you raised about non-executives with fixed term appointments. Your point was how does a company ensure that a director ceases to be a director at the end of his fixed term - was it just left to a gentleman's agreement that he would go at the end of his term?

As you will see from what I say below, the only effective way to ensure that the director goes at the end of his term is for the shareholders' resolution appointing him to specify the period of his office or to rely on some provision in the company's articles. I am not, however, aware of any companies phrasing their shareholders' resolution in that way or making changes to their articles for the purpose.

We have considered the following questions:

1. Can the appointment of a director be for a fixed term in the absence of an express power to that effect in the Company's Articles?

   The appointment can be for a fixed term if that is explicit in the resolution of the body which appoints the director and is consistent with the powers of that body. In fact, a director is normally first appointed by the Board but most companies' articles require that appointment to last only until the next A.G.M. Accordingly, any

resolution by the Board fixing a term beyond the next AGM would be ineffective.

The only way for an appointment to fix the period effectively, is if the appointment is by means of a shareholders' resolution (e.g. at the first AGM at which he comes up for re-election) expressly stating the term. This will be effective only if the term expires on or before the date on which the director comes up for retirement by rotation (or vacates office for some other reason). The resolution would therefore have to provide that he holds office during his term subject to any earlier vacation of office under the articles.

Once a director has been validly appointed for a fixed term and that term has expired, the director will automatically vacate office. No further formality will be required.

2. Will a contract between the Company (signed on its behalf by a director with Board approval) and the non-executive director limiting his term of office be effective, i.e. will the non-executive automatically cease to hold office on the expiry of the term?

Any attempt by the Company to fetter by contract the powers which are exercisable by its shareholders is ineffective - see Russell v. Northern Bank. Thus the director will not automatically cease to hold office at the end of his term. Nor would a court grant an order that he has ceased to hold office in the absence of an appropriate shareholders' resolution.

3. Will a post-dated letter of resignation handed over by the director at the time of his appointment be effective?

It is probably a breach of fiduciary duty by a director to hand over a letter of resignation in advance, in that it fetters his discretion to remain - resignation at a time when the director ought to remain to protect the assets of which he is a fiduciary could be a breach of such duty. It is not clear whether a letter of resignation given in breach of such duty is nevertheless effective - I am very doubtful that the court would wish to declare that the director was bound by a letter given in breach of such duty.

4. What steps can a company take to remove a director whose appointment did not state the period of his appointment but who was intended to hold office only for a period which has expired?

The following courses may be available:

(a) if the company's articles enable a director to be removed from office by the remaining directors (or a majority of them), this procedure could be followed;

(b) an ordinary resolution removing the director could be passed at a general meeting of the company (whether an AGM or a meeting convened specifically for the purpose).

Compliance not long after June 30th.
mid July for comments — definitive statement. Internal control further behind

CFACG(93)4

lesson — two issues go beyond best practice.

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE — Mgts worried about their authority

JOINT WORKING PARTY DRAFT GUIDANCE FOR DIRECTORS ON GOING CONCERN Internal Control

— dangers of short/bland statement.

— process shld. be described leading to an opinion.

Note by the Secretary

1. Committee members have recently been sent direct a copy of the Draft Guidance for Directors on Going Concern and Financial Reporting, developed by the Working Group on Going Concern.

2. At its meeting on 3 March 1993, the Committee briefly discussed the issue of whether it would be advisable to formally endorse guidance emanating from the accountancy bodies in respect of the going concern and internal control recommendations in the Code of Best Practice. Reservations were expressed, particularly insofar as the Committee could be seen to be endorsing guidance which would be applicable to companies who were otherwise outside the scope of the Code.

3. It has subsequently been pointed out that although the Standards produced by the Auditing Practices Board have a wide application and are for auditors generally, the guidance prepared by the Joint Working Group is being drawn up in the context of the Report and Code. They do not regard it as part of their work to draft guidance for preparers of accounts outside the scope of companies covered by the Report, and are, in fact, responding directly to the recommendations in paragraph 5.16 and 5.22 of the Report. The Working Group point out on the opening page of the Draft Guidance that they intend to seek the endorsement of the Committee before issuing firm recommendations.

The Committee may wish to consider:-

4.1 Whether it wishes to formally make comment, as a Committee, on any points in the Draft Guidance;

4.2 Whether it is in agreement, in principle, to endorse the Guidance, once all comments have been received and considered.

Gina Cole
21 May 1993

CFACG(93)5

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

DIRECTORS' PAY

Note by the Secretary

1. The subject of directors' pay continues to prompt articles and letters in the press. The Committee's Report and Code of Best Practice are being used as the benchmark against which both journalists and correspondents measure companies' performance. (Indeed the Code was described in the Independent as " .... the City's new squeaky-clean guidelines.."). The majority of journalists have a fair grasp of the scope of the Code, while others disappointingly seem to have thought that the Code would be a panacea for all ills ("If anyone really believed that the Cadbury code would put an end to profligacy in the boardroom, they will be seriously disappointed." - the Guardian on 6 May, before the Code even comes into practice!).

2. In a letter to the Times, the Top Pay Research Group has recommended (as it did in its evidence to the Committee) that a company's remuneration committee should be able to draw on outside advice as necessary. They add that it is possible, via selective research, to justify almost any salary review or bonus system. Another correspondent has urged shareholders to follow the example of their US counterparts in exerting pressure on directors, particularly in relation to pay. While the Times has pointed out that there are gaps in the Code, for example there is no requirement to give details of severance payments or compensation. They consider that companies with good lawyers and accountancy advisers will still be able to draw a veil over elements that might prove embarrassing.

3. Bearing in mind the amount of attention it has received to date, the subject of directors' pay is likely to be under an even brighter spotlight after 30 June, when companies have to make compliance statements.

4. The Committee may wish to keep this area under review, with a view to recommending further action for its successor body in June 1995.

Gina Cole
21 May 1993

CFACG(93)5

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

COMPLIANCE STATEMENTS - STOCK EXCHANGE LISTING REQUIREMENT

Note by the Secretary

1. The Head of Listing at the London Stock Exchange, Nigel Atkinson, wrote to the Company Secretaries of all listed companies (including USMs) on 23 April advising them of the Stock Exchange requirement for compliance statements in reports and accounts for years ending after 30 June 1993.A copy of the letter is attached for ease of reference.

2. Several companies have now contacted Mr Atkinson, with specific reference to the following paragraph in the listing requirement:-

> "A company that has complied with only part of the Code or has complied (in the case of requirements of a continuing nature) during only part of an accounting period, must specify the paragraphs with which it has not complied, and (where relevant) for what part of the period such non-compliance continued, and give reasons for any non-compliance."

It has been pointed out that companies with accounting periods ending after 30 June 1993 will have difficulty in complying with the Code for that part of their accounting period which lies before the Code's publication in December 1992.

3. The line taken by Mr Atkinson in response to this has been to acknowledge the difficulty, but stress that shareholders will be more interested in knowing what steps a company is taking to address any areas of non-compliance in the future (if they have not been addressed already).

4. In view of the number of queries he has received, and the quality of some of the companies (Shell Transport and Trading, British Steel, RTZ, Blue Circle Industries) Mr Atkinson is seeking assurance from the Committee that the line he is taking has your approval and that it is in accordance with that set out in the Code.

5. Obviously, this point will only apply to a limited number of companies in preparing one set of report and accounts. The wording in the listing requirement was agreed with my predecessor, Nigel Peace, and subsequently discussed and approved by the Stock Exchange's Quotations Committee.

Gina Cole
21 May 1993

CFACG(93)6

Annex 3

1. Copy of letter of 23 April 1993 from the Head of Listing at the London Stock Exchange, to the Company Secretaries of all listed companies.

2. Copies of correspondence between the Stock Exchange and RTZ, and Shell Transport and Trading. Similar queries have been received form the following companies:-

British Steel plc
Blue Circle Industries plc
British Petroleum Company plc
Lloyds Bank plc
IMI plc

London **STOCK EXCHANGE**

23 April 1993

To: The Company Secretaries of listed and USM companies and all Yellow Book subscribers

Dear Sir/Madam

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

Further to publication of the report of the Committee on the Financial Aspects of Corporate Governance, the London Stock Exchange has with immediate effect, adopted the following listing rule as an addition to the continuing obligations of Listed Companies incorporated in the United Kingdom:

> "A company incorporated in the United Kingdom must state in its annual report and accounts for accounting periods ending after 30 June 1993 whether or not it has complied throughout the accounting period with the Code of Best Practice published in December 1992 by the Committee on the Financial Aspects of Corporate Governance.
>
> A company that has complied with only part of the Code or has complied (in the case of requirements of a continuing nature) during only part of an accounting period, must specify the paragraphs with which it has not complied, and (where relevant) for what part of the period such non-compliance continued, and give reasons for any non-compliance.
>
> A company's statement of compliance must be reviewed by the auditors before publication insofar as it relates to paragraphs 1.4, 1.5, 2.3, 2.4, 3.1 to 3.3 and 4.3 to 4.6 of the Code."

USM companies incorporated in the United Kingdom will be required to incorporate the substance of the above in their General Undertaking to the Exchange at the earliest practicable date. The Exchange believes that by requiring a company to make this statement, that company's shareholders will be in a position to communicate directly with the Board of the company if they consider that the company has not sufficiently complied with the Code.

../cont.

The Exchange does not see it as part of its own role to pass judgement on whether the extent of a company's compliance with the Code is adequate or not, but it may make public any company's failure to make the required statement.

Yours faithfully

Nigel Atkinson
Head of Listing

CC: Gina Cole

RTZ

SECRETARY

Our Ref: JSB/CAS/047

19 May 1993

Nigel Atkinson Esq
Head of Listing
London Stock Exchange
London EC2N 1HP

Dear Mr Atkinson

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE CADBURY CODE

Thank you for your considerate reply of 18 May and for forwarding a copy of my letter to the Secretariat of Cadbury. I would be most interested to know their views in due course.

In response to the last sentence in the second paragraph of your letter, my point really is that companies ought not to be required by Stock Exchange rules, as opposed to Cadbury, to comply fully with the Code prior to knowing the requirements.

I do hope that the Stock Exchange will be able to bring its requirements in line with what I believe to be the general interpretation of the Code as explained in my letter of 12 May, assuming of course that this interpretation was intended by Cadbury.

Yours sincerely

J S Bradley

THE RTZ CORPORATION PLC 6 ST JAMES'S SQUARE LONDON SW1Y 4LD
TELEPHONE 071-930 2399 TELEX 24639 FAX 071-930 3249
REGISTERED OFFICE 6 ST JAMES'S SQUARE LONDON SW1Y 4LD REGISTERED IN ENGLAND NO 719885

London **STOCK EXCHANGE**

London EC2N 1HP
Telephone 071 797 1000
Telex 886557

18 May 1993

J S Bradley Esq
Secretary
The RTZ Corporation plc
6 St James's Square
London SW1Y 4LD

Dear Mr Bradley

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE CADBURY CODE

Thank you for your letter dated 12 May 1993.

The Stock Exchange's continuing obligation requirements are designed to reflect the objectives of the Code in that they apply to companies reporting financial periods ending after 30 June 1993. I fully recognise the difficulty a company may face in complying with the Code for an accounting period which commenced prior to the release of that Code. However, I believe that it is more important for companies to state the action that they propose to take over any area of non-compliance, as I believe that shareholders and investors will recognise the difficulty in a company being able to fully comply with the Code prior to knowing the requirements.

I have forwarded a copy of your letter to the Secretariat of Cadbury in order to ensure that your views are known to them, and I will respond again when I have heard from them.

Yours sincerely

N Atkinson
Head of Listing

RTZ

SECRETARY

Our Ref: JSB/CAS/157/044

12 May 1993

N Atkinson Esq
Head of Listing
London Stock Exchange
London EC2N 1HP

Dear Mr Atkinson

CADBURY

Thank you for your letter of 23 April.

In the Code of Best Practice, the Committee recommended

> "that listed companies reporting in respect of years ending after 30 June 1993 should make a statement in their Report & Accounts about their compliance with the Code and identify and give reasons for any areas of non-compliance."

On the ordinary meaning of these words, it seems that so long as a listed company complies with the Code at the time the Report & Accounts are prepared then a statement of compliance may be included.

I was therefore surprised to see that the Stock Exchange has adopted a rule which requires that failure to comply with the Code in respect of earlier periods must be noted in the Report & Accounts and reasons given for areas of non-compliance.

The Code was first published in December 1992 and in our next Report & Accounts we will be obliged, according to your recent letter, to give reasons for non-compliance even though we had at the outset planned to become fully compliant during the course of 1993. I should add that this Company has always advocated and practised good corporate governance and our current non-compliance is only in respect of minor technical matters, shortly to be put right.

Continued /

THE RTZ CORPORATION PLC 6 ST JAMES'S SQUARE LONDON SW1Y 4LD
TELEPHONE 071-930 2399 TELEX 24639 FAX 071-930 3249
REGISTERED OFFICE 6 ST JAMES'S SQUARE LONDON SW1Y 4LD REGISTERED IN ENGLAND NO 719885

I should be interested please to know why the Stock Exchange wishes to implement the Cadbury recommendations as outlined above, in a way which is not apparent from the wording of the Cadbury Report.

I look forward to receiving your views.

Yours sincerely

J S Bradley

London **STOCK EXCHANGE**

London EC2N 1HP
Telephone 071 797 1000
Telex 886557

17 May 1993

J A Cunliffe Esq
Secretary
The "Shell" Transport and Trading Company plc
Shell Centre
London SE1 7NA

Dear Mr Cunliffe

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE CADBURY REPORT

Thank you for your letter dated 14 May 1993.

I have passed your letter to the Secretariat for Cadbury to see if they have any views on the matter raised in your letter and will revert to you when I hear from them.

Yours sincerely

N Atkinson
Head of Listing

The "Shell" Transport and Trading Company
Public Limited Company

14 May 1993

N. Atkinson Esq.
Head of Listing
London Stock Exchange
London EC2N 1HP

Direct lines:
Tel: 071 934 5171
Fax: 071 934 7043

Our ref: LGSL 10/122

Dear Mr Atkinson

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

Thank you for your letter dated 10th May.

I am afraid that I do not share your belief in likely shareholder reaction. My concern is that a statement of compliance can be very brief indeed; much greater length will need to be taken to specify, as required by the Regulation, the paragraphs with which the company has not complied, for what part of the period such non-compliance continued, together with the need to give reasons for any non-compliance. That feature of the report may well give a totally false impression of the quality of Corporate Governance maintained by the company.

It seems to me that there ought to be a real justification in terms of understandable policy for the requirement to report non-compliance for periods when companies could not have complied, i.e. before 1st December 1992 when the Cadbury Report was first published or when they were reasonably considering the question of implementation of the Cadbury Report. My own sense of the matter is that Boards of Directors will be concerned with this requirement and will regard it as unreasonable in the light of the very considerable publicity which has been given to this issue to report on non-compliance in this first year. May I therefore ask you please for the matter to be reconsidered with a view to the Regulation either being amended or an appropriate waiver being publicised ?

Yours sincerely
The "Shell" Transport and Trading Company, p.l.c.

J.A. Cunliffe
Secretary

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10 May 1993

J A Cunliffe Esq
Secretary
The "Shell" Transport and Trading Company plc
Shell Centre
London SE1 7NA

Dear Mr Cunliffe

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

Thank you for your letter dated 6 May.

I note that Shell already complies with a substantial number of requirements set out in the Cadbury Code and that you are disappointed about a rule which seeks disclosure by a company as to whether it has complied during only part of an accounting period. I fully recognise that it is difficult for a company to fully comply with the Code when it has not been given a full year's notice of the requirements. However, I believe that shareholders will acknowledge that reality and will be more interested to know what steps you are taking in the future to deal with any areas of non-compliance.

I trust that this response answers your concerns but please do not hesitate to contact me if you require any further information.

Yours sincerely

N Atkinson
Head of Listing

The "Shell" Transport and Trading Company
Public Limited Company

6 May 1993

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Dear Mr Atkinson

THE LONDON STOCK EXCHANGE'S CONTINUING OBLIGATION REQUIREMENTS FOLLOWING THE REPORT OF THE
COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

Thank you for your letter dated 23rd April 1993 concerning the adoption of an additional requirement imposing on unlisted companies the obligation to report on compliance or otherwise with the Code of Practice set out in the Cadbury Committee Report on The Financial Aspects of Corporate Governance.

Perhaps I should explain by way of background that this Company already complies with the substantial aspects of the Code. For example, we have had a Remuneration Committee composed of Non-executive Directors since 1967. Although no final decision has been taken, it has been our intention that for the remaining few items of the Code with which the Company (understandably) did not presently comply - mainly purely technical matters - compliance would be arranged so that in the Annual Report and Accounts for the year ended 31st December 1993 it would be possible for us to report total compliance.

It was therefore a surprise and disappointment to us to read the terms of the new regulation. The second paragraph of the rule obliges a company which has complied "during only part of an accounting period" to specify the paragraphs with which it has not complied. As we understand it, therefore, a company which next reports for an accounting period ending (say) 30th September will have to report on matters of non-compliance in the relevant accounting period, i.e. from 1st October 1992. Since the Cadbury Committee Report was not published until 1st December 1992, this will at the least require reports of non-compliance for the period of two months before the Report was available.

Is this really intended? It seems to us to be excessive. Indeed, we would have expected that listed companies should be given a reasonable time for consideration of the Report and, as necessary, its implementation before any reporting obligation arose. We would not have objected on this basis to having to report non-compliance for periods after 30th June 1993 but for the reasons explained it seems to us extremely curious for non-compliance to have to be reported before that date.

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The obligation to report non-compliance before the Cadbury Committee Report was published is presumably unintended but it does seem to us to be the correct interpretation of the new regulation. The result is eccentric.

It will be a matter of anxiety to the Company's Board of Directors if for purely technical reasons it is necessary to take up space in the Annual Report to explain areas of non-compliance before 30th June 1993.

We shall be grateful for your confirmation that this is not intended or required.

Yours sincerely

J A CUNLIFFE
Secretary