

7 September 1993

Sir Adrian Cadbury,  
Committee on The Financial Aspects of  
Corporate Governance,  
c/o The London Stock Exchange,  
London,  
EC2N 1HP.



**Meeting 9th September 1993**

I am sorry that I will not be able to be at the meeting on the 9th September but I thought you might like to see the following observations on some of the agenda items.

**Item 3 - Large Private Companies**

We think the Committee should tread warily over Jonathan's suggestion of extending the Code to large private companies. Up to now the Committee has confined itself exclusively to quoted companies and to the protection of the property interests of widely dispersed and therefore vulnerable shareholders. The report is on the financial aspects of corporate governance and the recommendations and the Code reflect this narrowness of approach. There was, moreover, a considerable degree of pre-existing consensus as to best practice in this narrow area.

There is much less consensus as to the proper relationship between the company, the board, and the wider interests that Jonathan has identified in his paper. I do not think that we should press private companies (which may, even if big, have all the shares held by the directors) to adopt a Code which was not developed with these wider interests specifically in mind.

There is, moreover, a significant problem over compliance. With the possible exception of the suppliers of prior charge capital (who could perhaps include a reference to the Code in their debentures) we can identify no non-governmental body that can exert, in the case of unquoted companies, the type of sanction which the Stock Exchange is capable of applying to quoted companies. Acceptance of Jonathan's suggestion could therefore be taken as implying acceptance by the Committee of the need for legislative intervention.

Item 4

By contrast, I feel that the suggested attempts to exempt small listed companies from the Code carry very little intellectual weight. We can see no reason why such companies should not be asked to comply with the Code - indeed, since many may be relative newcomers to the market they will have little track record of dealing with Stock Exchange obligations. It might be thought therefore that they should be expected to comply more strictly with the Code than those with a longer record.

Item 6 - Rolling Contracts

I referred to the IOD's proposed paper on remuneration at our last meeting. This is still in course of preparation.

Finally, Item 7 - Executive & Non Executive

You may find the enclosed extracts from the IOD's "Guidelines for Directors" useful.

- a) "Executive Directors are members of the board who carry out executive functions and are remunerated separately for them" (para 86).
- b) "The term 'Chief Executive' appears to be a transatlantic import. In the USA the Chairman is often described as 'Chairman and Chief Executive Officer', in contrast with the 'President and Chief Operating Officer' (i.e. in UK terms someone performing the function of the Managing Director as defined above). In the UK the title 'Chief Executive' floats uneasily between Chairman and Managing Director. It is most commonly and perhaps most appropriately used as a synonym for 'Managing Director' where it draws attention to his or her position as the leading executive director."

"A good deal of confusion could be avoided if this were the only use that was made of the term. However, if the Chairman exercises a significant proportion of the board's powers through delegation it may be appropriate to draw attention to this fact in his or her title. In this case the title may be 'Chairman and Chief Executive' or 'Executive Chairman', especially if there is also a Managing Director or Managing Directors responsible for operations." (Paras 81-82).

I hope you find these points useful.

*Yours ever*



**Dermot de Trafford**