

Review of the role and effectiveness of non-executive directors

Response by F&C Management Limited

Introduction

F&C Management is a fund management company originally created by Foreign & Colonial Investment Trust, one of the world's oldest money managers. It is now the UK fund management arm of a pan-European asset manager known as F&C, which has assets under management of over Euro 100 billion. Further details can be found on www.fandc.co.uk

F&C Management Limited (F&C) supports the submission of the National Association of Pension Funds (the NAPF) to the Non-Executive Directors Review. There are some particular points of detail on which F&C wishes to comment further.

Comments on issues for consideration

The following comments are supplemental to those made by the NAPF in its submission to the review and may be at variance with it.

A: Role

What role should non-executive directors perform, and how does this compare to the present position?

Q2 *What should be the key roles of non-executive directors on the board and what should be the balance between the different components? Within a board, should all non-executive directors be expected to fulfil each of the different roles?*

F&C notes with interest the assertion to be made by a professional body, not yet submitted to you. This is that all independent non-executive directors (independent NEDs) should be entitled to attend any meeting of any board committee, whether or not they are committee members.

Q7 *Should there be a special role for a "senior independent" non-executive director?*

F&C agrees with the view expressed verbally by Sir Ronald Hampel on this subject. There should be a designated independent non-executive director who can act as the focal point when the chairman is the subject of discussion. Apart from this, there appears to be little that a Senior NED would do within the board in that capacity. Externally, F&C would like to see a NED other than the chairman establish regular contacts with a few of the company's largest investors for the purpose of hearing the investors' views on the company and its directors. The Senior NED (who should not be the chairman) seems ideal for this purpose. It is not proposed here that this should be a two-way conversation, so this proposal excludes the suggestion that the Senior NED should inform investors about the Company.

B: Attracting and appointing non-executives

What knowledge, skills and attributes are needed, and what can be done to attract, recruit and appoint the best people to non-executive roles?

Q9 *What are the key skills, knowledge and experience which are needed by non-executive directors to perform the role effectively, and how is this likely to change over the next, say, 10 years? Are some skills essential and, if so, what are they?*

A NED needs the ability to contribute to strategy development and to challenge executives on strategy options and other matters, as necessary. F&C sees the NEDs' contribution to strategy as being one of challenging the executives rather than one of proposing strategy. NEDs should not attempt to drive strategy because this would compromise their independence.

Q10 *What personal qualities and attributes are needed?*

A NED needs good judgment, common sense and the tenacity to follow through. This follow through should be done with tact or, if necessary, in a robust fashion. It needs to be timely. It has long been said of NEDs that their failure, when it occurs, is not one of intellect but one of application.

A NED should be prepared to resign over matters of principle and to explain why to shareholders. A NED should always give an explanation to shareholders for a resignation over matters of principle. This should be done in a way that achieves the right balance between the interests of effective Corporate Governance and the other ongoing interests of shareholders. This judgment on how much information to provide is one that a NED must make after the resignation has taken place.

Q11 *What sort of mix of experience and attributes is desirable on a Board? Specific examples of cases where non-executive directors have contributed with particular effect to company performance, or to corporate governance, would be helpful?*

In addition to the required levels of professionalism and ability, it is necessary for all board members to maintain an individual sense of duty and purpose. Acting individually in this way can require strength of character when, for example, it means going against the tide of opinion.

Q13 *What could be done to widen the pool of potential non-executive directors and introduce greater diversity into appointments? What are the constraints on this? Is there scope for greater international representation on UK boards?*

The NAPF implicitly acknowledge the role of 'retired' people on boards when they state that NEDs who hold purely non-executive positions should justify how they could manage more than five posts. The reality of life today is that full-time executive and professional careers can end some years before the state retirement age is reached. Amongst these early retirees will be those who would make good NEDs. These people will be reluctant to invest much time and effort in formal training to prepare themselves for this role unless they are given some hope or prospect that they will be considered for NED positions after they have completed their training. At the moment, encouragement in this area seems to be deficient. The appointment of such people to do committee work could relieve their busy NED board colleagues who are in executive positions on other boards, freeing these 'executive elsewhere' NEDs to undertake more profit-orientated NED activities, such as strategy.

In relation to constraints to widening the pool of potential directors, the NAPF makes the valid point that high directors fees could compromise a NED's independence (not their exact words). This could restrict the potential pool of NEDs because it could rule out people with moderate means. F&C deduces that this provides a reason to be cautious when considering increases in fees for NEDs. In this context, the definition of overly high fees that F&C prefers is that the living standards of NEDs should never depend on their board remuneration [Lord Marsh, *Professional Investor*, April 1992]. This is preferred to the narrower alternative definition of comparing directors' fees with other income (suggested by the NAPF) because the former definition brings into consideration the full personal circumstances of the individuals in question, not just their other income.

C: Structures and accountability

Do existing structures and procedures facilitate effective performance by non-executive directors?

Q19 *Similarly, do you have comments on the composition, duties or operation in practice of Nomination and Remuneration Committees?*

The work of the nomination committee is one of the most important corporate governance functions undertaken by NEDs. F&C believes that all independent NEDs should be involved in the main stages of selection for board appointments to the extent that each considers necessary. This is particularly so when a new chief executive is to be appointed. An example of good practice for the appointment of a chief executive or NED would be for the full board first to discuss the requirement. Then, the nomination committee would prepare a position specification and candidate specification, which would then be discussed by the full board. The nomination committee would then proceed to find suitable candidates. From these, the final selection of candidates would meet the full board, which would then makes a decision.

Effective succession planning could cause some truncation to the above procedures but it is unlikely that succession planning should lead to automatic promotion for individuals without fresh thought and consideration.

The membership of the Nomination Committee should always include at least one Independent NED. This is in addition to the Combined Code requirement that the majority of its members should be NEDs.

The answer to Q2 above will refer to the nomination and remuneration committees.

D: Relationships with shareholders and others

Do existing relationships with shareholders or others need to be strengthened?

Q23 *How well do relationships between non-executive directors and shareholders and stakeholders work, and could they be improved? For example, we would be interested to hear views on what the relationship might be between non-executive directors and institutional shareholders. How could this relationship be strengthened?*

See answer to Q7 above.

Q25 *What should be the relationship between non-executive directors and executive directors, and with senior management? What should their relationship be with the Chairman and Chief Executive? What should their relationship be with key advisers to the Company?*

One particular listening and learning exercise that can be conducted by a designated Independent NED is that of exit interviews. In our opinion, all senior executives who have reported to executive directors, as well as former executive directors themselves, should be offered the opportunity to have a one-to-one chat with an Independent NED shortly after departure from the company.

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