

Response to the Review of the role and effectiveness of non-executive directors

Henderson Global Investors, part of the AMP group of companies, is a leading fund management company managing assets for a wide range of clients including life assurance and insurance companies, pension and other institutional funds, investment trusts and funds for retail customers.

Henderson has always considered good corporate governance as an essential element in protecting and enhancing the wealth of our clients; non-executive directors play an important part in this.

Henderson is an active member of the ABI and supports all the points made in that organisation's submission to the Review. The points below are additional to the ABI's recommendations.

Role of NEDs

The Board as a whole has the duty to control the strategic direction of the company and the non-executives must share in this collective responsibility. They should take the lead in ensuring good governance and the avoidance of conflict of interests. They can be a valuable source of external expertise to the company and the executive directors.

Composition of the board

We believe that more could be done to ensure that boards include enough non-executives to secure the necessary levels of external expertise and scrutiny. We believe that in the case at least of larger companies, half the board members should be NEDs, and half of these should be independent.

Independence

To be considered independent a director should have no involvement either previously or currently with the executive management of the company or the providers of professional services such as solicitors, accountants and financial advisers. It is generally accepted (though experience shows that this is not always so) that service on a Board over a certain duration - typically nine years - lessens a director's independence.

Number of boards on which a NED should serve

Although the number of Boards a director can serve on must vary between individuals and the companies' circumstances, it seems unlikely that an individual can devote sufficient time or make a satisfactory contribution to more than four. In the case of a director who has a full-time executive role elsewhere the individual should probably sit on no more than one other board. Where a NED serves on a larger number of boards, companies should explain to shareholders how the person concerned is able to devote sufficient time and attention to the company.

We consider that the Review should make a best practice recommendation to this effect.

Role of Senior NED

The role of the Senior Non Executive Director will vary from company to company and in particular whether the Chairman is an executive or non-executive. If the Chairman is executive the SNED should be the focal point of contact between the shareholders and the non-executive directors.

Knowledge, skills and attributes of NEDs

NEDs should have a spread of skills, knowledge and experience, but not all directors require identical skills. Although financial and/or business management backgrounds will obviously be useful and would be expected to be present in some of the non-executives, companies should not look for potential directors exclusively from the traditional pool of directors, accountants and other financial professionals.

Candidates from different backgrounds and other professional disciplines should be considered and will provide a different and wider perspective. A number of companies have found it useful to appoint NEDs with non-business backgrounds – e.g. from the voluntary sector, government agencies or the scientific community. In particular, companies should seek out NEDs with skills and experience relevant to the risks and opportunities of the corporate social responsibility (CSR) agenda. A number of factors are making informed strategic advice in this area increasingly essential for companies. These include: the new legal obligations on pension trustees to consider social, environmental and ethical issues; proposed reporting requirements on these matters under the Company Law Review; the Myners' review's identification of the importance of non-financial aspects of corporate performance; and emerging policy at the EU level. These issues are also of growing importance to a variety of companies' stakeholders – including customers, employees, regulators, government and investors.

Public sector bodies regularly advertise vacancies for non-executive governance positions in order to attract talented candidates from the broadest possible pool. We would encourage companies to adopt a similar approach.

We would also encourage companies to provide induction and refresher training for NEDs on all relevant issues, including corporate social responsibility. We note that this is called for in the ABI's Guidelines on social, environmental and ethical issues, but that few companies have thus far indicated that they provide such training.

We consider that the Review should make best practice recommendations on the above points.

Composition of the Audit Committee

Audit Committees should, like Remuneration Committees, be constituted solely of independent non-executives. Independence is at least as important for Audit Committees as it is for the Remuneration Committee.

We consider that this should become a requirement of the Combined Code.

Board structures and procedures

A number of leading companies – including BP, GlaxoSmithKline, AstraZeneca, Boots and Rio Tinto - have established dedicated board committees on corporate social responsibility matters. Henderson welcomes this structural recognition of the strategic importance of these issues and the clear focus that a dedicated forum for their consideration provides. This is not the only model by which such issues can be handled at board level – many companies deal with this area through the Audit Committee. However, we believe these issues differ substantially from audit matters and merit separate consideration. We consider it to be good practice to establish a specialist committee and encourage other companies to follow this path.

We consider that the Review should make a best practice recommendation to this effect.

NEDs' relations with shareholders and other stakeholders

The relationship between non-executives and shareholders, particularly the institutional shareholders, is clearly important. There is room for improvement in the current situation. Although it is probably not necessary to formalise arrangements – for example through annual meetings - shareholders do need to be able to approach the Senior Non-executive Director or where appropriate the Chairman of one of the Committees to discuss specific topics.

The non-executive directors should be provided with the information necessary for them to fulfil their responsibilities. The Company Secretary, who is responsible to the Board, should be responsible for ensuring this is available. If the non-executives believe they are not being provided with the necessary information they must draw the matter to the attention of shareholders.

NEDs could also obtain a wider range of valuable information on the company and the risks and opportunities facing it through contacts with a wider range of stakeholders in addition to shareholders. Employees and their representatives, customers, regulators, government departments, non-governmental organisations and others can provide perspectives that assist in understanding the expectations and opinions that others have of the company. We would encourage companies to facilitate opportunities for NEDs to interact with such stakeholders.

We consider that the Review should make a best practice recommendation to this effect.

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