

The Response of The Institute of Chartered Accountants of Scotland

6 September 2002

REVIEW OF THE ROLE AND EFFECTIVENESS OF NON-EXECUTIVE DIRECTORS

The Institute's Business Law Committee has considered the consultation paper "Review of the Role and Effectiveness of Non-Executive Directors" and I am pleased to set out its comments below. These comments were approved by the Institute's Council on 30 August 2002.

Overall Comments

1. We are aware that this consultation came about in response to the collapse of Enron. Although the precise reasons for Enron's failure may be many and have not yet been fully established, it seems that the structure of Enron and the transactions in which it became involved were so complicated that few executives and none of the non-executive directors ("NEDs") could understand them. What seems to have emerged, however, is that if the NEDs had been more proactive and challenging of the executive management, then the events which ultimately led to its collapse may have been avoided.
2. Whilst the UK system of corporate governance is different from that in the US, we very much support the current review of the role and effectiveness of NEDs in the UK. We believe that a fundamental review should be capable of identifying improvements, whether these are radical or merely marginal, and we hope that sufficient impetus exists to implement such improvements.
3. Although this review focuses on the role of NEDs, it is important to recognise that NEDs do not operate in isolation but as part of a unitary board. In many areas we feel that the consultation paper should have focused on the operation, role and constitution of the board in totality and the interaction between the executives and non-executives, rather than merely on the specific role of NEDs.

4. In our view, there are a number of fundamental questions underlying any consideration of NEDs: what are NEDs for?; and can NEDs make a difference on a Board? We believe that NEDs do have a strong role and should make a real difference on a Board, and we expand on these questions in our detailed comments below.
5. Key to considering the role of NEDs is the recognition that a balance needs to be struck between the duties imposed on non-executive directors, the consequent liability to which these duties expose them, and the rewards offered. In particular, unless the perceived liability exposure of non-executive directors is seen to improve, this could jeopardise attempts to broaden the pool of available non-executive directors, and thus undermine the strengths of the UK board structure.

Recommendations

6. The thrust of our comments can be summarised as follows:
7. *Openness and Transparency*
We support openness and transparency in corporate governance systems. In particular, in the context of NEDs, such principles should be followed in the recruitment and appointment of a NED, in disclosures relating to the NEDs' independence and remuneration, and in reports on the activity and performance of the Board and audit committee.
8. *Senior Independent Non-Executive Director*
We recommend that the position of senior independent NED be formally established. We believe that this would result in a more consensual management approach and avoid the stand-offs which can occur in the present Chairman / Chief Executive arrangement. Such a position would also be a focus for the concerns of other NEDs, especially in circumstances where the Chairman becomes too close to the Chief Executive. We make some further suggestions as to the possible roles and responsibilities for a senior independent NED in section 7 of the Appendix.
9. *Balance on the Board*
We emphasise the need for balance on the board – in terms of industry, product and market knowledge, geographical background, skill set, age and experience of all directors and, in particular, NEDs.
10. *Succession Planning / Widening the Pool of NEDs*
A key underlining theme from many of our comments is the need for succession planning, on a company and whole-of-business basis. It is important to the continuing strength of UK business that boardroom skills and experience are developed, and that there is a culture of developing younger individuals so that they can accumulate experience to enable them to take over in the future. Consequently companies should encourage younger individuals, possibly in senior management or executive director positions to take up an NED position in another company, in order to develop their own skills and experience. Similarly, companies should be willing to bring a younger, less experienced, individual on to the Board as an NED to benefit from that person's enthusiasm and fresh ideas. Not only would this enhance the pool of NED resource over the medium term, but it would also benefit all the companies involved in the shorter term through the development of the individuals' management skills.

Non-Statutory Solutions

11. We believe that improvements to corporate governance, and in particular to the role of NEDs, should best be achieved through codes of best practice and not through statute. Codes of best practice can be much more flexible and capable of adapting quickly to the changing needs of business. Only where codes of best practice fail or are flagrantly flouted should legislation be considered.

Responses to Specific Questions

12. Our comments on the detailed questions raised in the consultation paper are set out in the Appendix to this letter. There are some additional, more radical, suggestions included in the Appendix which would merit further consideration.

We hope that our comments are of assistance to you in the development of your recommendations. If you wish to discuss any of these further, please do not hesitate to contact me.

Yours sincerely

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND
COMMENTS ON THE CONSULTATION PAPER:
“REVIEW OF THE ROLE AND EFFECTIVENESS OF NON-EXECUTIVE
DIRECTORS”

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Specific Questions

The following comments are set out in the order in which the questions appear in sections A to G of the consultation paper, and section numbers correspond to the those questions.

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

1. Role of the Board and the Chairman of the Board

The role of the Board should be to oversee all the different aspects of the running of the company's business, to set targets and monitor the company's performance. This would include consideration of strategic and risk management matters. The Chairman of the Board is crucial to this and should ensure that information is supplied to the Board to enable it do perform this function.

The Chairman should establish the processes necessary for the Board to fulfil its role. This will include the critical role of ensuring that the structure and composition of the Board is appropriate to the role it performs. The Chairman does not need to be familiar with all aspects of the company, but does need to ensure that all the necessary knowledge and experience resides within the membership of the Board. (Thus NEDs should be recruited for the contribution which they can make to the Board, rather than through their personal contacts.) Therefore, the Chairman also needs to be responsible for succession planning in order to replace Board members as they resign or retire from the Board.

We feel that the Chairman should not sit on the standing committees of the Board, but should attend meetings of these committees in an ex-officio, non-voting capacity. This would ensure that he or she retains some level of independence from the business of the standing committees but remains aware of their discussions and decisions. The Chairman of the Board should certainly not chair any of the standing committees. As a result, the Chairman of the Board would need to ensure that other NEDs on the Board have the requisite ability to chair these standing committees.

2. Role of the NEDs on a Board

We are aware that there are many different views as to the role of the NED. A reasonably established view, which we support, is that the NEDs' main purpose is to represent the shareholders on the Board. Even amongst NEDs, there are many different views as to their role and how this should be fulfilled, and this affects how each of them performs. Consequently, this underlies the differences in how effective NEDs are from company to company.

The main NED role should be in considering and contributing to Board and company strategy. It is vital, therefore, that the Board contains an appropriate balance between executive directors and NEDs, but also an appropriate mix of knowledge and experience – including industry and product knowledge, geographic knowledge and experience of the different disciplines within company operations such as sales and marketing, distribution etc.

Care needs to be taken not to recruit NEDs with strong vested interests, such as union representatives, consumer affairs representatives or environmentalists. NEDs need to be able to take a balanced view of issues arising, in relation to the best interests of the company as a whole.

As discussed below, a balance of ages amongst the NEDs is clearly beneficial. It would also be desirable that the age profile of the NEDs is not too out of line with the age profile of the executive directors. The two director groups need to work together, and where NEDs are all much older than the executive directors, inter-generational differences in attitudes can inhibit this.

3. *Present Position*

We believe that the current position is very different from that described above. Our experience is that the average age and service life of NEDs is still very high, and the “old boy network” is still very much in evidence. In many cases, NEDs still seem to be recruited through personal contacts: whilst this is easier and quicker for the companies, it may not lead to an effective NED element on the Board. A balance of ages amongst the NEDs is often beneficial. NEDs should also rotate in order to provide opportunities for fresh ideas and experience to be brought on to the Board.

4. *Independence of NEDs*

In our view, the majority of NEDs, and certainly the Chairman of the Board, should be independent of the company. This would extend to preventing former employees or executives from being regarded as independent because, *inter alia*, of their conflict of interest as members of the company pension scheme. Similarly, NEDs involved in organisations which supply services to, or make purchases from, the company would not be regarded as independent.

We do not favour any requirement for all NEDs to be independent. We believe that a balanced Board should be capable of including some NEDs with an interest of some kind in the company and some NEDs who are completely independent. However, we strongly recommend that the position of each NED in relation to independence should be fully disclosed in company annual reports. This would allow investors to make their own assessment of the level of independent representation on the Board.

5. *Conflicts of Interest*

A key issue is the relationship between the chairman and the chief executive. These two roles should be required to be separate. The chairman should be independent of the company and the chief executive, and should not depend on the chief executive for keeping his job. The chairman should be able to stand up to the chief executive. In the absence of a tough, independent, chairman, the chief executive could be very dominant.

Chief executives should be prohibited from becoming chairman after their term as chief executive. Such an individual would be too powerful and could find it difficult to break away from the detailed company operational matters.

NEDs would be assisted in protecting the interests of the company against a domineering chief executive, or even against a domineering Chairman, if there was a third powerful position on the Board – the senior independent NED. This is discussed further in section 7 below.

6. *Time Commitment*

NEDs need at least 15 to 20 days per year to fulfil the role properly, with additional days if they have other roles such as membership of one of the Board's standing committees. It is important to the fulfilment of their role that NEDs have the time and the commitment to read the Board papers properly before the Board meetings, and be prepared to raise points at the meetings.

In our view, the Chairman of the Board would be unlikely to have sufficient time to hold a full time role in another organisation.

7. *Senior Independent NED*

Assuming that the Chairman is an independent NED, and that the chief executive is prohibited from also being chairman, the special role as “senior independent” non executive director may appear to be redundant. However, we strongly recommend that such a role be established. This would allow the senior independent NED and Chairman to stand up more effectively against a domineering chief executive, or the senior independent NED and chief executive to stand up more effectively against a domineering Chairman.

Given the onerous role of the Chairman, the senior independent NED could also:

- have a role in reviewing (eg annually) the composition of the Board;
- be the focus for any concerns of other NEDs, especially in situations where the Chairman becomes too close to, and fails to challenge properly, the Chief Executive (see below);
- act as the contact point in communicating with shareholders (see section 23 below); and
- demonstrate his or her credentials as a possible successor to the Chairman of the Board.

The senior independent NED role could be useful where the chairman has been in place for a number of years and is too close to the chief executive: it would be a matter for the “senior independent” NED to challenge, and possibly replace, the chairman. Thus the “senior independent” NED role could be useful in preventing the independence of the chairman being diluted.

8. *Directors' Duties*

We believe that, although the roles of the executive and non-executive directors are quite different, the unitary board concept should be retained.

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

9. *Skills, Knowledge and Experience*

As discussed in section 2 above, the Board should contain an appropriate balance between executive directors and NEDs, and also an appropriate mix of knowledge and experience – including industry and product knowledge, geographic knowledge and experience of the different disciplines within company operations such as sales and marketing, distribution etc. Experience of specific processes and procedures such as capital raising may also be of benefit for companies about to undertake similar processes.

10. *Personal Qualities and Attributes*

NEDs need to be confident and persistent in seeking information and explanations from the executive management, and in contributing to Board discussions. Ideally, they should also be capable of strategic, forward looking, and lateral, thinking.

Paramount, however, is the need for NEDs (and the executive directors) to have integrity.

11. *Mix of Experience and Attributes*

See section 9 above.

The benefits of bringing in new NEDs and new ideas should be recognised by companies, who need to guard against NEDs staying too long and becoming stale and out of touch. This is especially the case where NEDs have retired from all their executive or senior management roles.

We suggest that NEDs should remain on boards for 4 to 8 years and then either become Chairman or senior independent NED, or rotate off. Consideration should also be given to recommending that a certain proportion (possibly one third) of NEDs are in full time employment in an executive or senior management capacity. This should ensure that a reasonable proportion of the NEDs are fully up to date with the range of issues facing company executives.

12. *Recruitment of NEDs*

It needs to be recognised that recruitment of appropriate NEDs can be difficult and costly. Companies need to develop a detailed specification of the type of experience and knowledge they are looking for and engage a specialist recruitment agency to seek out candidates.

13. *Widening the Pool of NEDs*

We believe that there is a mismatch between those executives and senior managers who are willing to become NEDs and the NEDs currently sought by companies. Companies tend to seek more senior, experienced, individuals as NEDs, and it is this category of individual which is in short supply.

A new medium to longer term strategy needs to be adopted if the UK is to retain its current Board structure and continue to require NEDs. It needs to be recognised by companies that younger and less experienced individuals can enhance the balance on a Board and make a valuable contribution as NEDs. There are many individuals in executive or senior management roles who are enthusiastic and could make a valuable contribution as NEDs. Ideally, a company needs a blend of younger more junior NEDs and older experienced NEDs, and involving these younger individuals is necessary in order to groom them as the senior, experienced NEDs of the future. It is likely that they will start off as NEDs of smaller companies, but they will in due course eventually move up to larger and larger companies as their skills and experience develop. In the current business environment, it is the starting step of securing the initial appointment as an NED which can be missing.

Many executive directors and senior managers who are keen to take up NED positions never do so. One of the barriers to this is that there is no single central forum for recruiting, or offering one's services as, a NED. Increasingly, however, specialist recruitment agencies hold databases of individuals interested in and suitable for NED roles, and companies seeking NEDs should be encouraged to advertise openly for them and/or engage such agencies. Nevertheless, there must be a large number of willing individuals whose skills are never engaged.

Companies should be encouraged to allow their executive directors and senior management to hold a position as a NED in another company, as a form of executive training and management development. The experience gained by the individual in the executive and non-executive roles could greatly benefit each company. (Clearly, the NED position would not be in a competitor company or any other company which might give rise to a conflict of interest for the individual.)

14. *Rewards for NEDs*

The remuneration levels of which we are aware, that is £30,000 to £35,000 pa for FTSE 100 companies and around £25,000 for other plcs, seem reasonable for the 15 to 20 days needed for a NED appointment. It would seem appropriate for companies to establish a reward structure based on some established daily rate. Thus, there would be some basic fee for a simple NED position, and with additional amounts payable for membership of a Board standing committee, and a further amount for chairing the Board or a Board standing committee. Some provision should also be made for the situation where the company becomes a target for acquisition: in such circumstances the NEDs can spend significant amounts of extra time in handling the company's bid defence, whilst the executive directors continue to run the business.

We prefer that NEDs be paid only in cash. It is certainly not appropriate to award share options to NEDs. Whilst payment in shares might be regarded as aligning the NEDs' interests with those of shareholders, we believe that a better perception of independence and transparency is given by paying cash remuneration and thus allowing the NEDs to buy some of the company's shares themselves if they so wish.

15. *Risks and Insurance Provision*

The risks facing NEDs, which are the same as those faced by the executive directors, are very significant. Indemnity insurance purchased by the company for the directors should cover the whole Board.

We have previously recommended to the DTI that the purchase of appropriate levels of indemnity insurance for the directors should be made compulsory, at least for listed companies. We understand that this has been considered briefly by the Company Law Review Steering Group, but that it is unlikely to be taken forward. It is likely that individuals would be more comfortable accepting appointments as NEDs where appropriate indemnity insurance cover exists. There are also other reasons for making indemnity insurance mandatory and we would be happy to let you have further details, on request.

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

16. Combined Code in Practice

We believe that the Combined Code is working reasonably well in practice. Boards are trying to ensure that they contain an appropriate balance of individuals. Generally they have the necessary number of NEDs, but are now seeking to improve the calibre of their NEDs. The difficulty in obtaining high calibre NEDs and the appropriate balance of skills should not be underestimated. Essentially the NED resource pool is too shallow: there are not enough high calibre experienced NEDs with sufficient time to commit.

We believe that the definition of “independence” in the Combined Code remains appropriate. However, we suggest that Boards be required to disclose in the company annual reports the extent to which the Board regards individual NEDs as independent. That is, the Board should justify its view of the independence of its NEDs in an open and transparent manner.

17. Board and Committee Structures

We believe that existing structures and procedures would facilitate effective performance by NEDs, if they were fully adhered to. However, we have some concerns that, in practice, NEDs are not being as effective as they could be.

Board meetings may not be as useful as they might be. Our understanding is that often the executives meet beforehand to discuss in detail matters which will be considered further at the Board meeting. Board meetings then consist of the executive directors making a report, with the NEDs asking questions – with minimal free-flow debate. To be truly effective, there must be real interaction between the NEDs and the executives, on an equal basis. In particular, board meetings should not just focus on detailed matters, but should allow time for full board discussion on strategic matters. This should be where the experience and independence of the NEDs can best be utilised to the company’s advantage.

We recommend that the Chairman should attend these executive meetings at least once or twice a year, to improve the Chairman’s knowledge and understanding of some of the detailed issues underlying matters discussed at Board level.

We believe that NEDs can sometimes be reluctant to raise matters or challenge the executives at Board meetings. They may not have read the Board papers sufficiently thoroughly and/or may not be confident enough in their challenge. The meeting may also be too short to allow time for such discussion. A number of suggestions derive from these concerns.

First, companies should send board papers to NEDs in sufficient time for them to read them properly. Secondly, NEDs should themselves allow time to read the Board Papers thoroughly, and sufficiently in advance of the Board meeting that they can request additional information which they deem necessary or desirable. Thirdly, it may be beneficial for the NEDs to meet on their own prior to some or all of the Board meetings. This would give them an opportunity to share any concerns and agree what matters should be raised in the Board meeting itself. Fourthly, Boards should allow themselves sufficient time for their meetings: they should avoid being limited by relatively unimportant constraints (such as lunch!) and each member should be prepared to commit the requisite amount of time.

In our view, Boards should have between 6 and 14 members. An optimal Board size is around 10 to 12, with a proper balance of executives and NEDs. Large companies should not necessarily have larger boards, as large boards are often not effective.

In order to facilitate the transfer of information to all parties, we believe that the minutes of all Board standing committee meetings should be circulated to all Board members, including the executives. Similarly, the minutes of all executive meetings should be circulated to all NEDs.

18. *Audit Committees*

Audit committees are very important and, in our view, currently work well. They need to meet regularly and be proactive. We would also support a greater role for the audit committee in the appointment of the external auditors and the oversight of their relationship with, and independence of, the company.

Given the complexity of some of the modern financial arrangements and the need to be able to understand the financial statements and discuss matters intelligently with the company auditors, there needs to be at least one person with relevant and up to date financial experience, preferably as Chairman. However, such a role is seen as very onerous and risky for most such people: we are aware that the corresponding rewards for this role are perceived to be too low in relation to the risk involved.

19. *Nomination and Remuneration Committees*

We believe that nomination and remuneration committees fulfil an important role and should be retained. However, we note that remuneration committees have not been effective in constraining the overall levels of directors' remuneration: directors still seem to receive very large amounts of remuneration, including in cases where they are seen as having failed in the performance of their duties.

We are aware that a requirement for extended disclosure and an advisory vote on directors' remuneration have recently been implemented (Directors' Remuneration Report Regulations 2002 – SI 2002/1986). Time should be allowed for these to be implemented and for an assessment to be made of their effectiveness.

20. *Board Objectives*

We recommend that the Chairman or senior independent NED should establish processes to set objectives and review performance against those objectives, for the board as a whole and for individual directors. These processes should be carried out regularly, eg annually.

21. *Board Performance*

We are not aware of any existing procedures for assessing Board and Board member effectiveness. However, we recommend that the Chairman or senior independent NED should undertake a regular (eg annual) review of the composition and performance of the Board and the competence and performance of its individual members.

We believe that a more formal and useful means of accountability for Board performance would be through disclosure in the company annual report. This might cover the number of meetings held during the year, details of the main matters discussed, the rationale for the main Board decisions, and individual members' attendance records.

In addition, a codification of the role and responsibilities of a NED would greatly assist NEDs and could make individuals more willing to act as NEDs.

22. *Facilitating NED Challenge to Executive Decisions*

We have a number of suggestions to make it easier for NEDs to challenge executive decisions, and to protect NEDs from domineering chief executives:

- Establishing a senior independent NED, as discussed under section 7 above. This would allow the senior independent NED and Chairman to stand up more effectively against a domineering chief executive;
- Holding meetings of the NEDs prior to Board meetings where the NEDs' concerns can be discussed (see section 17 above);
- Facilitating a whistleblowing facility (possibly to the FSA, as Listing Authority) so that concerns can be reported externally and assistance sought (see subsequent paragraph below);
- Allowing NEDs to write to all shareholders, at the company's cost, to communicate any matter on which they have a significant concern (see below);
- Providing that only the Board as a whole can eject an NED regarded as "challenging" or "troublesome" (see below).

We are aware that NEDs are not legally employees and do not have the protection of employment and related law, the Public Interest Disclosure Act, etc, and have no mechanism to defend themselves or effect redress. Neither does a NED have any mechanism to highlight concerns externally. Consideration needs to be given to the means by which NEDs can report issues externally and seek assistance without going to the extreme length of resigning from the Board (and making a corresponding press statement). It may be beneficial to give NEDs the right to write to all shareholders, at the company's cost, to communicate any matter on which they have a significant concern. NEDs should also be protected by prohibiting their removal other than through the (Companies Act 1985) section 303 procedure, ie at a general meeting. This would prevent them being removed by the Board alone. These matters should be considered further.

Generally, NEDs need to be more knowledgeable about the company and need to be more involved in driving the Board agenda and in getting the information which they need. Companies should provide full induction courses for new NEDs, covering business knowledge and the main drivers of the business, site visits, current issues facing the business etc.

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

23. *Communication between NEDs and Shareholders*

Although communication between companies and shareholders has improved significantly in recent times, we are not aware of any formal relationships existing between NEDs and shareholders. Although shareholder meetings with NEDs, perhaps prior to AGMs, may appear to be a good idea, we are concerned that the NEDs may not have enough detailed information to meet the expectations of the shareholders. Consequently, we are concerned as to whether this is really practical and whether it would achieve the objective.

We suggested in section 7 above that the senior independent NED should be the main contact for communication between shareholders and NEDs. We recommend that the senior independent NED should meet the shareholders or make him or herself available to shareholders between the issue of the annual report and the company AGM. This would allow the shareholders to raise any matters of concern, to be taken forward with the Chairman, chief executive or the Board as a whole.

Given the important role of the Chairman, we considered whether this role should be formalised and whether the Chairman should be elected by the shareholders. Whilst this might improve aspects of corporate governance, we can envisage some practical difficulties, and have consequently not come to a conclusion on this matter.

24. *Chairman's Role in making NEDs Effective*

The chairman should consider what the NEDs are needed to do, and thus balance the necessary expertise on the Board.

25. *Relationship between NEDs and Executives and Senior Management*

The importance of "Board Chemistry" should not be underestimated. Although the executives and the NED have separate functions and may meet separately beforehand, it is important that the Board members can work together in an atmosphere of trust and respect.

As a means by which the NEDs develop and keep up to date their knowledge of the business, we believe that it would be useful for the NEDs to have a relationship with the senior management. This might take the form of periodic "away-days" for the Board and senior management, or more informal meetings prior to Board meetings. This would also give the senior management useful insight and experience in relation to their own (actual or potential) NED appointments and career development.

26. *Company Secretaries' Role in Supporting NEDs*

The company secretary should have a good working relationship with the NEDs. The secretary should be independent of the Board and provide service to both the executives and NEDs.

E How can non-executive directors best be supported to perform their role?

27. *Access to Information*

We believe that current information flows to the NEDs are often not sufficient for them to fulfil their responsibilities. The onus is very much on the NEDs to identify any additional information necessary, in addition to the Board papers provided by the executive directors. We recommend above that NEDs should meet alone before some or all of the Board meetings: this opportunity should be used to help understand the information provided and identify what further information is needed.

28. *Training and Development*

We observe that few companies provide the necessary training and development for their NEDs. Such training and development should be bought in as required from external providers, to complement the business-specific induction processes supplied by the company.

29. *Induction for NEDs*

In our experience, many companies do not provide an effective induction process for new NEDs. As indicated in section 22 above, companies should be encouraged to provide a full induction procedure for new NEDs, covering business knowledge and the main drivers of the business, site visits, current issues facing the business etc.

30. *Guidance*

Our view is that most NEDs do not receive clear guidance on what is expected of them, or feedback on whether they are meeting their expectations.

In our April 2002 submission to the House of Commons Treasury Select Committee, we recommended that the boards of UK plcs be reminded of their statutory responsibilities and that guidance be developed for them; we also recommended that consideration be given to introducing for UK plcs specific guidance relating to the responsibilities of the non-executive directors on the board.

F In what ways is the position different for smaller companies?

31. *Smaller Listed Companies*

For smaller listed companies the NEDs often perform more of a “hands-on”, “hand-holding”, role to the executives. This is very different in larger companies where they are more remote and more focused on corporate governance matters. Fundamentally, however, the corporate governance requirements should not be different for smaller listed companies. All listed companies are essentially custodians of their shareholders/public money and should be required to follow similar procedures. It is the public listing on a stock exchange which should be the defining factor and not the size of the company *per se*.

G What can we learn from international experience?

32. *International Experience*

In our opinion, the UK is well ahead of other countries in consideration of corporate governance matters, and is significantly more open and transparent.

There may be lessons to be learnt from recent corporate problems in the US in relation to the impact of market expectations and incentive based remuneration on the behaviour of executive directors, and in such circumstances how difficult it is for NEDs to operate effectively.

33. *Other Corporate Governance Models*

As noted above, we believe that the UK is well ahead of other countries in consideration of corporate governance matters.

We do not favour a two-tier board structure as is common across the EU, as this does not provide opportunities for discussions between executives and non-executives. Furthermore, supervisory boards generally seem to contain too many vested interests, which makes it difficult to come to decisions which represent the overall best interests of the company. Neither do we favour the US board model where the executives are heavily outnumbered by non-executives.

34. *Aligning UK Practice with Other Countries*

As indicated above, although there are ways in which improvements could be made in the UK, we do not favour aligning UK practice with that other countries. In our view, the UK has become one of the most transparent business environments, which is certainly unrivalled elsewhere in the EU.

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