

REVIEW OF THE ROLE AND EFFECTIVENESS OF NON-EXECUTIVE DIRECTORS

Consultation Paper

RESPONSE BY JOHN JACKSON

I have served on the boards of companies listed on the London Stock Exchange as a non-executive director continuously since 1961. Initially I served as a “representative” of a dominant shareholder but since 1980 only as a private individual on the basis of my knowledge, experience and independence of outlook. Since 1982 I have served as chairman of the board of a number of listed companies which have varied widely in the nature and scope of their activities, their stage of development and size. Currently I chair the boards of Celltech Group plc (Europe’s largest biotechnology company which until recently was a member of the FTSE 100), Xenova Group plc (a small biotechnology company), Wyndeham Group plc (a small specialised printing company) and three Oxford Technology Venture Capital Trusts (all of which invest in early stage high technology companies). I am Deputy Chairman of the boards of BHP Billiton Ltd (Australia) and BHP Billiton plc (UK) where I am also the Senior Independent Director. These two companies work as one very large mining conglomerate in a dual listed company structure. I am also the Chairman of the Remuneration Committee of BHP Billiton. I am a director WPP Group plc, a global marketing services company. I am Chairman of their Audit Committee. I am a director of and the Senior Independent Director of Brown & Jackson plc, a discount retailing company in the UK with a dominant South African shareholder. I am also a director of some small private companies, charities and “not for” profit organisations.

For the last forty years I have observed and been involved in the development of corporate governance particularly in the 1960s and early 1970s when I was closely involved in discussions (amongst others with Professor Gower and Lord Wederburn) on the responsibilities of directors and the merits of two-tier (as opposed to unitary) board structures. I have experience, as an observer, of the workings of US, South African, Australian and Dutch boards and their board committees.

I have three opening observations to make which colour and inform my response to the questions set out in the Consultation Paper.

1. There is a growing and increasingly urgent need for international convergence in respect of accounting standards and practice and corporation law and practice (including in particular what we call corporate governance) and in respect of the regulation of markets on which listed securities are dealt.
2. Whilst many people in many countries would agree with the definition of the duties of directors postulated in the White Paper published recently in the UK and they would also agree that those duties should be owed to the corporation concerned, they would point to a major problem when one addresses the question of accountability. Corporations have legal personality but that is only a convenient legal fiction and whilst it is possible to owe a duty to such a

“person”, it is meaningless to be accountable to “them” for the way in which that duty is discharged. To date that problem has been dealt with by a combination of prescriptive law and the general proposition that directors are accountable to the shareholders for the way in which they discharge their duties to the corporation. However, in the case of listed companies, this is becoming increasingly a matter of theory. Hedge Funds and Tracker Funds are not true investors and have no real role to play in accountability. Increasingly that is the case with all financial/institutional investors. It is just possible to persuade some of them to play an active and thinking investor protection role (often in groups) in respect of matters such as board composition, executive remuneration, dilution and fundamental shareholder interests but there is little prospect of their playing a meaningful accountability role in respect of the “non-financial” matters referred to in the proposed definition of directors’ duties. The reality is (and this is particularly pronounced in the US and increasingly so in the UK) that the investment community regards shares in listed companies as primarily liquid commodities dealt with on an informed market and very little as giving title to continuing rights and obligations. This is evidenced by behaviour. Consider practices such as stock lending and dealings in derivatives. Consider also the ways in which fund managers expect to be judged. The increasing unwillingness/inability of financial shareholders to play a meaningful role in respect of the accountability of company directors has far reaching implications.

There is no very obvious alternative accountability system and this is plainly recognised in current UK prescriptive proposals in respect of OFRs supported by an ethos of open disclosure to everyone (not only the “market”), by sanction, and an imaginative use of modern information technology. But all this will result in increasing emphasis on the importance of all directors and particularly non-executive directors being people of integrity and prepared to expose themselves and their activities to increasing levels of open, public scrutiny and, particularly, public comment.

3. There is still the unresolved (and little debated) question of whether it is better to encourage corporate governance based on a system of checks and balances or on a system based on the attempt to reach consensus. The two systems require different kinds of non-executive directors with different outlooks. By way of note, the two-tier systems whether derived from a notion of co-determination as in Germany or a notion of the “general interest” as in Holland (those two well known systems work quite differently) are, fundamentally, checks and balances systems. The unitary system that we have in the UK is based conceptually on the notion of consensus but, as often demonstrated in the US (and sometimes in the UK), can be made to work badly in a checks and balances way for which it is not well suited. Corporate US says it has a unitary system but tends increasingly to operate a kind of two-tier system. This originates from two notions. The strong general opinion in the US is firstly that there should only be one executive on the board who “calls the shots” (the CEO) and that secondly he should also be the Chairman of the Board. This “denial” of a separate role for the Chairman is (particularly post Enron) encouraging the notion that there may well be a need for a lead

independent director. Thus the US has increasingly a checks and balances situation to which unitary board systems are not well suited. There is growing pressure for the “independence” of non-executive directors to be closely defined, for independent directors to meet alone and under separate leadership from the CEO/Chairman and for remuneration committees and audit committees to have duties to perform which are detailed and very extensive. The upshot of this is likely to be an informal two-tier system but with fuzzy definitions of duties and responsibilities and, possibly, increasing the perceived need for detailed “rule based” legislation.

I urge that we think about “best practice” non-executive directors as working within a unitary board system based on the notion of consensus. This requires recognition of a strong separate role for the Chairman (I would like to see this as mandatory) and the presence on the board of executives in addition to the CEO who are, qua directors, the equals of the rest of the board.

I have attached as an appendix to this response some notes I prepared recently for a large company whose board was looking for guidance on corporate governance as it affected the workings of the board.

A **Role**

1. See attached appendix.
2. It is dangerous to attempt too much precision. Apart from general principles and common sense much depends on the nature and needs of the company in question. Within a board all non-executive directors should have a clear understanding of the duties they have in common with all other directors. The way in which they can bring their particular skills to bear is, in a sense, an “add on”. It is of great importance that non-executive directors can “stand back” from a business. This is much easier achieved in a unitary consensual system than in a checks and balances system.
3. What I say under (2) above reflects the present position as I know it.
4. Apart from the obvious questions of economic and social ties independence is very much a state of mind and all directors, not just non-executive directors, should have it. The closer you move to a checks and balances system the greater the pressure to be formal and to adopt precise rules on independence. The more you move to a consensual system the easier it is to apply common sense.
5. Apart from the obvious question of “external activities” the main conflicts of interest can arise in respect of the operation of the remuneration system. Remuneration systems can, and should, have a powerful motivational effect on executive directors. They need to be designed carefully. This is an area where non-executive directors have an especially important role which can, and arguably should, involve

consultation with well organised institutional investors in an “investor protection” role.

6. Time commitments will vary entirely according to the circumstances of companies and the capacities of individuals. It is useless and unhelpful for people to be asked to “divide up” their time. All these roles have to be performed twenty-four hours a day, seven days a week etc etc. In the nature of things this will (and should) limit severely the number of non-executive positions that someone who is a full time executive should take on. It is my experience that, as matters presently stand, non-executive directors must expect to spend more time on the affairs of small companies. This is not a “bad” thing. Such companies tend to have less experienced management and cannot afford the supporting infra structure that one finds in large companies. Any move in the UK towards more prescription and “rules” could increase the amount of time which non-executive directors will need to spend on detailed work and this could, in turn, result in a (disproportionate) increase in the time devoted to the affairs of larger and more complex companies despite the “safety net” infra structure in those companies. In my view this would not be a “good” development. It could create a “wood for the trees” problem, be inefficient and may well make it less attractive for people to serve as non-executive directors. It would, of course, have implications for the number of non-executive posts that any one person could take on. No sensible and responsible person takes on more than he can handle properly. To restrict the number of positions an individual can hold, either by prescription or by the burden of detailed work, would shrink (not increase) the pool of available talent and reduce the possibility of cross fertilisation benefits. It could also make it more difficult for small companies to attract non-executive talent.
7. Initially I was opposed to the notion of a special role for a “senior independent director” – a formalised Deputy Chairman. Having now had experience of this by being one and by relating to one either as a chairman or as another non-executive director, I believe that in a unitary consensus based system it has distinct advantages, particularly with regard to the internal workings of the board. Situations do arise from time to time in which it is helpful for the Chairman of the Board to have an identified senior colleague with whom he can have confidential discussions without offending other members of the board. Similarly non-executive directors can find themselves in a situation in which it is helpful to be able to have a confidential discussion with such a person without offending the Chairman of the Board. In my experience the occasions on which the investing institutions will get benefit from access to a senior independent director are limited. It is nevertheless a valuable safeguard from their point of view also.
8. After more than fifty years in business and more than forty years serving on the boards of companies, I have come down solidly in favour of unitary board systems which contain a mixture of non-

executive and executive directors with the Chairman separate from the CEO and which attempt to work on the basis of consensus. I am therefore strongly opposed to distinction between the legal duties of executive and non-executive directors.

B. Attracting and appointing non-executives

9. See comments under Section A.
10. Essential personal qualities and attributes are integrity, independence of mind, ability to stand back, analyse and articulate, instinctive openness and a willingness to accept public comment.
11. Dangerous to generalise. I have had personal experience of situations in emerging biotechnology companies where non-executive directors with deep scientific knowledge and experience were able to make a very valuable contribution both by interrogating and supporting the science based management team.
12. Not easy. The pool of available talent is not very big. That is the main problem, not mechanisms.
13. The answer to this is unavoidably related to the question of expectations. What do we want from non-executives? If we move closer to prescription and rules and the need for detailed work, the smaller the pool is likely to become. The closer we come to international standards the greater will be the possibility of including other nationals in the pool.
14. With regard to the form of remuneration, I believe payment in cash to be the most appropriate. There are obvious dangers in share options, particularly if they have early exercise dates. Much is made of “aligning the interests of directors with shareholders”. I doubt if any deep thought is given to what this really means. I believe it is better for directors’ personal interests to be aligned with their duties to the company. So far as the level of remuneration is concerned, the more that is expected of non-executive directors the more it will be necessary to pay them.
15. I think it is proper for directors to be indemnified by their company against liabilities they may incur in the course of performing their duties, provided those duties are performed properly, ie neither fraudulently, or negligently. I also think that it is proper for companies to cover their liabilities to directors by insurance and for the policies to be written in favour of the directors.

C. Structures and accountability

16. As I observe it, the Combined Code works well. Much depends on the effectiveness of the Chairman.
17. Again, these are very much affected by the quality of the Chairman. Within reasonable limits, size is not very significant.
18. I think that, as in the USA, there is a danger of audit committees being expected to do too much with the risk that they lose sight of the wood for the trees. In my view, the essential roles of the audit committee are two-fold. Firstly, to ensure that systems are in place which enable risks at all levels to be identified in a timely way and managed appropriately and, secondly, to be satisfied that the company presents its affairs to the outside world in a transparent way which properly reflects the position of the company and the consequences of its business strategies. I have heard a proposal that they be renamed “transparency committees”.
19. The role of the remuneration committee is particularly important because of the connection between remuneration and the behaviour of the executive management (particularly with regard to long and short term issues). In my view the nominations committee is of less importance. To the extent that is possible, all board members should be concerned with changes in the board and questions of board balance.
20. In my experience, this is a relatively new area for UK companies. The usefulness of the idea is closely related to whether boards are to operate a checks and balances system or a consensual system.
21. See (20) above.
22. In companies which have self-confident and open management, experienced and alert non-executive directors and a capable Chairman, non-executive directors are able to successfully and constructively challenge executive decisions and intentions. Personally, I have never been involved in a situation in which an able and self-confident management knew of a serious problem and failed to bring it, with analysis, to the attention of the board. But, in any system, it could happen. In general rules and procedures are no substitute for integrity, ability, self-confidence, alertness and mutual respect.

D. Relationships with shareholders and others

23. I think there is a growing and serious problem in the area of relationships between companies and their shareholders with regard to accountability. This is largely due to the phenomena discussed in the second of my introductory remarks. The problem is, I believe, linked with the fact that increasingly shareholders/fund managers think within

the time span relevant to their interests which may be quite different from the time span relevant to the “best” interests of the company as perceived by its directors. Shares are increasingly seen as a liquid commodity to trade in and not as representing a genuine investment in an enterprise. The number of UK investing institutions who organise themselves in such a way that directors are able to discuss the affairs of the company without the institutions becoming an “insider” is diminishing. The ability to have “investor protection” discussions with groups of institutions and with the ABI, the NAPF and PIRC is helpful but different.

24. A good Chairman will ensure that the board as a whole works effectively. In my judgement it, by definition, is far easier to do that in a consensual system than in a checks and balances system.
25. See attached appendix.
26. A good company secretary supported and encouraged by all directors can assist the Chairman (and the directors themselves) in ensuring that all directors are effective.

E. Support

27. It depends on the circumstances. A good Chairman will see to this.
- 28/29/30 Personally, I am unconvinced about the usefulness of training and development (other than “on the job”) but I think it is becoming increasingly important for all directors both on joining a board and periodically thereafter to be reminded of the nature and extent of their duties. A good Chairman will let directors know if they are not meeting expectations.

F Smaller listed companies

31. In my view the same basic principles should apply to smaller listed companies and it is beneficial for them to be dealt with in that way. However, I have already remarked that the management of these smaller companies is likely to require more active help from their non-executive colleagues. This affects the amount of time the non-executive directors must be prepared to spend and will certainly affect the attributes required. An intellectually powerful but “remote” non-executive director can intimidate the management of a small company to no useful purpose whilst in a large company he/she may well be a very valuable challenger/contributor.

G International Context

- 32/33/34 See introductory remarks. There is an increasing need for convergence.

John Jackson
August 2002

Appendix

THE ROLE AND RESPONSIBILITIES OF THE BOARD AND DIRECTORS

**By
John Jackson**

The Role of the Board

The combined effect of Common Law, Statute Law and most companies' Articles is embedded in normal commercial practice and is such that:-

1. The directors, who are appointed by shareholders have the individual responsibility, but collectively exercised, for management of their company's affairs.
2. The directors proceed as a Board by majority decision and with provision for a quorum.
3. The directors may appoint one of their number to be a Managing Director (in most cases now called Chief Executive, the expression I use from now on) with such powers as they may decide to delegate to him exclusively or collaterally.
4. The directors may appoint one of their number to be Chairman of the Board for such period and with such powers and duties to be exercised on their behalf as they may determine.
5. The appointments and delegation of powers referred to in 3 and 4 above which may be revoked or varied at any time in no way affect the ultimate collective responsibility of the Board as a whole.

Delegation to the Chief Executive

The scope of the powers delegated to a Chief Executive are rarely defined precisely. But the appointment of a Chief Executive normally involves a delegation of responsibility collaterally with the Board as a whole for the general management of the company's affairs in accordance with policies approved by the Board other than in respect of those matters which are reserved for decision by the Board as a whole. These reserved matters (which are now normally carefully described) usually include:-

1. Any matters which must be submitted by the Board to shareholders for approval or subsequent "ratification" (e.g. increasing the authorised share capital, co-option of additional directors).

2. Major changes in the status or nature of the company not covered by 1 above (e.g. obtaining a listing for the company's shares).
3. Issue of shares, other securities and large borrowings.
4. Major capital expenditure.
5. Continuing major commitments (e.g. pensions schemes).
6. Major disposals of assets or rights to the enjoyment of assets.
7. Major variation in or extension of the company's activities.
8. Contracts which virtue of size or subject matter are outside the usual course of business.
9. Appointments, organisation and remuneration of management at board level.
10. Engagement in or settlement of major litigation.
11. Appointment of main advisors (e.g. merchant bankers, main solicitors, brokers).

A Chief Executive is appointed to run a company's business and is expected to take the lead in the development of policy. He is the business "leader" of the company. Therefore, in practice, many of the above matters will be the subject of proposal and recommendations by the Chief Executive (supported by his executive Board colleagues) to the Board as a whole. Broad provisional approval to many will be covered by the adoption of the annual budget, the corporate plan and specific strategies. These provisional approvals may be varied as performance is seen against budget or plan or as and when specific approval is sought on final proposals. In approving the budget or corporate plan, the Board may indicate the areas it wishes brought back to it before commitments are made.

Although the general delegation to the Chief Executive is collateral, the actual exercise by the Board of its powers collaterally with him directly or through the medium of the Chairman should only happen in very exceptional circumstances. Otherwise, the Chief Executive's position becomes impossible.

The Role of the Chairman

The Board may appoint a Chairman for a particular meeting but, normally, a Chairman is appointed for a definite period or a continuing indefinite period. The Chairman manages meetings of the board in the sense that he sets agendas, signs minutes, establishes the general nature of information and papers to be made available to the board and settles other matters affecting the conduct of meetings. He will normally do these things in consultation with the Chief Executive, other executive directors (particularly the Finance Director) and the Company Secretary.

In the absence of other arrangements between Board meetings the Chairman stands in the place of the Board and is the custodian of its interests. When appropriate he will present the Board's collective view to the outside world. He is usually expected to give guidance on the overall composition of the Board and any sub-structure of committees so as to make the Board an effective team working in a harmonious way. He watches carefully the interface between executive and non-executive directors.

The amount and extent of the Chairman's activities will expand and contract with the level of activity requiring the attention of the Board. The nature of his activities is also affected by the fact that the delegation to the Chief Executive is collateral and not exclusive. In the course of his activities he may, and probably will, consult with other Board members on particular matters. He must be accessible to persons with a legitimate reason for contact with the Board. He has duty to call extra meetings of the Board should decisions be required between regular meetings on matters in areas reserved to the board or should he judge it desirable for the Board to meet for other reasons.

By convention the Chairman has the authority, in an emergency, to authorise action by the Chief Executive in areas reserved to the Board if he believes both that he can anticipate what the wishes of the Board would be and that the interests of the company would be harmed by delaying decision until a meeting can be convened. In such a case the Chairman must, to the extent practicable, consult with Board members readily accessible and must inform the Board as a whole of his actions as soon as practicable. In very exceptional circumstances the Chairman has the duty also to anticipate the wishes of the board and take action himself on its behalf if he believes a situation has arisen requiring such action. Again, he must consult to the extent practicable with other Board members (including the Chief Executive) and must inform the Board as a whole of his actions as soon as possible.

A Board may delegate executive powers to the Chairman either individually or as a member of a Board committee in relation to certain specified matters. This does not result in the Chairman or other members of such a committee who are non-executive Board members becoming executives of the company in the normal sense. They are performing their roles as Board members and usually in situations arising in areas reserved to the Board and requiring continuing action over a period. For example, when a board decides that a company should proceed to a listing for its shares it might appoint a committee to handle the matter and exercise the powers of the Board, subject to reservation to the Board as a whole of decisions on certain specified matters.

Although, for all practical purposes, the line of accountability of the Chief Executive to the Board runs through the Chairman, this does not make the Chairman the "line manager" of the Chief Executive: he has no authority to act in that way. The two roles are mutually supportive whilst being completely different in nature. The Chief Executive runs the business: the Chairman is the guardian of the interests and duties of the Board as a whole. The Chief Executive must inform and consult, both in a timely way. The Chairman must be sure he is informed and advise. According to his own strengths and experience some of his advice may be very persuasive.

A Board may, and normally will, wish the Chairman to be kept closely informed and consulted on particular important aspects of the company's external relations, e.g. major government contact. In all such cases, he will normally work in close co-operation with the Chief Executive and other executive directors.

It is useful to discuss under this heading the recently defined role of Senior Independent Director/ Deputy Chairman. As a result of some cases in which chairmen undermined or became too close to chief executives and/or failed to listen to messages of disquiet from the investment community, the investment community decided that in the case of every listed company they needed to know the identity of a senior independent director (not being the Chairman) with whom they could communicate if they wished. Whether this "cure" which is still a peculiar British approach, is better than the fairly rare disease time will tell. But it has changed, albeit in a subtle way, the internal dynamics of the board.

Organisation and Practice of Management

One of the matters reserved to the Board is the appointment of management at board level. Although all elections to (and removals from) the board as such is ultimately a matter for shareholders alone, it is normal for board appointments to be dealt with by a process of co-option by the Board and subsequent "ratification" by shareholders. It is rare for shareholders to exercise their powers of appointment or removal other than following a recommendation by the Board, but they can do so. It is, in fact, the only means available to them of exercising control.

When making managerial appointments at board level, the board is doing two separate but related things. It is deciding that someone with particular expertise should join the senior echelons of the Chief Executive's team with broadly defined responsibilities: it is also co-opting that person to the board, subject to eventual approval by shareholders. Both these matters would normally be the subject of proposals by the Chief Executive, although, in the case of recruitment from outside, the Board, via the Chairman and other members with special knowledge, would normally be involved in the selection process. When making his proposal, the Chief Executive would normally indicate the proposed structure of his team in terms of executive responsibilities and reporting relationships. On occasions the Board may ask the Chief Executive to consider specific aspects of the company's top management structure at board level.

The Board may be consulted either directly, or by discussion between the Chief Executive and the Chairman, on organisation and appointments below Board level but, normally, these are regarded as falling within the areas delegated to the Chief Executive. There is normally no delegation of powers by the Board to executive directors other than the Chief Executive. In their executive capacities, those other executive directors are senior staff who are members of the Chief Executive's team. They are solely responsible to the Chief Executive. However, they have a separate capacity as Board members and are the same as and the equal of all other Board members. This gives them an independence of position in Board meetings although there will be occasions on which they cannot play a full role as board members because of conflicts of interest. This situation, in part, lies at the back of the notion that a finance director, although a full member of the Chief Executive's team and

reporting solely to the Chief Executive, is expected to maintain some independence of stance. In many companies the Report of the Finance Director to the Board is a regular and separate agenda item.

The above is the background to the common practice in the UK to organise the structure of management at Board level in such a way that all executive directors report equally to the Chief Executive. Boards are cautious about structures that differ from this and most would not agree to a Finance Director reporting executively to anyone other than the Chief Executive. In the case of a company like (.....), similar considerations might apply in the case of the senior Science Director. These matters are also affected to some extent by the importance (in a business context) of the way in which a company is seen to perceive the relative standing of particular functions.

Although the Board ultimately determines structure (and, as already said, normally following proposal by the Chief Executive), the operation of that structure is, within reasonable limits, a matter of the Chief Executive. He has the closest access to the relevant facts. However, it is important that the Board as a whole understands and has an opportunity to comment on how the structure operates.

So far as practice is concerned, it is important that a clear understanding of responsibilities is supported by a clear and timely flow of information. It is normal, as in’s case, for the Chief Executive to report regularly to the Board on the company’s progress. This is in part the Chief Executive giving an account of the way in which he has discharged the responsibilities delegated to him. It is also an essential part of the process which enables the board to take well informed decisions in the areas retained by them. Separate reports by the executive directors, although different in character from the Chief Executive’s report, play an important part in this process also. It is also normal for the Chief Executive to consult with (or involve) individual Board members, according to their individual expertise about (or in) the Company’s affairs or to consult with the Board as a whole (directly or through the medium of the Chairman) on important matters even when they lie substantially in the areas where responsibility has been delegated to him.

As already stated, it is a part of the Chief Executive’s responsibilities to ensure that the Chairman has sufficient information to enable him to perform his duties properly. This includes up to date information on progress of events and proposed executive action in all areas of major importance. The relationship between the Chairman and the Chief Executive is a key interface and is an important part of the relationship between the executive and the Board as a whole. It is important that they understand the responsibilities they each carry and endeavour to be supportive of each other. It is also important that the different responsibilities are understood by other executive directors who, as already stated, have a dual role. As executives they are responsible solely to the Chief Executive, as Board members they, in common with all other directors, are concerned with assisting the Chairman in the discharge of his role.

It is normal that in the conduct of a company’s business there should be informal informative contact between the executive management and present and potential shareholders. This can happen in a number of ways. Informal presentations of information to groups of shareholders, analysts, financial journalists and so on are a

normal part of business life. If the company is listed or is otherwise subject to the City Code care has to be exercised and care must also be taken to reflect and not to anticipate Board policy on key matters (e.g. indications of future profitability). Presentations of this kind are normally dealt with by the Chief Executive and his executive colleagues. If the Chairman is involved, for example by chairing a particular important press conference, it is usually because management has asked him to give a helping hand or because the Board as a whole has signalled that it thinks it appropriate that its Chairman should be involved. The same applies to the involvement of other non-executive Board members.

The above is different from the formal contact between shareholders and the Board as a whole, e.g. at Annual General Meetings, when the different roles are well established by convention. The emergence of corporate governance as an area of importance to the investment community has a bearing on this. The major institutions now have departments dealing with corporate governance which have a separate and increasingly influential position. They expect to have access, directly or indirectly, to the Chairman of the Board who is regarded as being “responsible” in this area. The “new” position of Senior Independent Director who will be brought into play if the Chairman is not independent or behaves in a way which causes “concern” flows from the importance attached to this aspect of a company’s affairs.

Finally, much of the above by inference or specifically is now incorporated in the Combined Code.

John Jackson

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