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Consultation Paper

In making these submissions to you I should first declare that my involvement as a non-executive is not with listed plc's but from the slightly 'tangential' sectors of Building Societies and Housing Associations as well as small unlisted companies.

Role

The commonly expressed idea that the board is really in control of our organisations is perhaps a little naive. Good chief executives are leaders, drivers and achievers and must be supported, guided and controlled by boards. The executive element of the board may often not be anything like as loyal to the board as they are to the chief executive of whose team they are a part. The only way of retaining any balance in the dynamic between boards and executive is to have an adequate number of non-executive directors.

We often consider non-executives for chairman. In my view both reality and public opinion see them as executives even if they are part time. Furthermore successful companies do require the relationship between chairman and CEO to be strong and primarily used for the development of the business. It is time we recognised this and counted chairmen as members of the executive team.

It is important that non-executive directors are strictly independent but obtaining relevant skills may sometimes make this difficult. Nevertheless independence must be achieved.

Experience indicates that non-executive roles of any consequence take up at least 3 full working days per month. Less than this and there is little chance that you can be adequately abreast of the industry. Logic dictates that there must therefore be a limit to the number of posts that any individual can hold. Having said that legislation for this may not be necessary if other methods are used to assess the performance of non-executives and some of this is put in the public domain.

The senior independent role is one that I believe strongly should be developed. As indicated above I do not think that it should be the chairman's role.

For reasons to follow concerning the types of people to do the job and having distinguished the chairman's role as executive, I believe that the distinction between executive and non-executive should remain in law and perhaps be enhanced.

Attracting and appointing non-executives

My key concern over current selection policies for non executives is that they are either selected because they are high profile individuals or because they have relevant skills. The primary reason for choosing them should in contrast be because they are good challengers. Given the existence of the 'senior independent' role and an understanding that performance of that role includes encouraging other non-executives to come forward and challenge where their expertise allows. By contrast the use of the 'great and the good' is a marketing ploy and not consistent with independence at all. By all means appoint these people as directors but as part time executives and not as non-executives.

One other class of director that should be treated as executive however part time are those representing investments either of their own or of their other company involvements.

It could be argued that professionals coming to the board should take a part time executive role rather than non-executive. This may sometimes be reasonable. The distinction should be made on the facts. Due regard would have to be given to non-executives engaging on pieces of executive work and the effect of this on the balance of the board between executive and non-executive members.

Structures and accountability

The position of non-executive directors is nowhere more important than on audit committees. In one of those where I am involved all non-executives sit on the audit committee to great effect. The benefits of challenge are easy to see but the other great benefit is that an audit committee gives an opportunity for non-executives to analyse the business using the internal (and to some extent external) auditors as their eyes and ears. This then reflects in better decision making when the board regroup.

The biggest weakness of all audit committees is the complacency born of familiarity both with the executive team and with the audit team. Rotation of committee members helps but a culture that sees internal audit too as a short term appointment may also need to be looked at.

I believe that there is a need for a non-executives annual report (possibly written under the guidance of this senior independent) spelling out what the non-executives have particularly concerned themselves with in the past year and where they are going to concern themselves in particular in the coming year. Whether this report should go into the annual accounts or whether this gives rise to 'too much transparency' is open to debate.

This report may assist in covering some of the difficulties in assessing the performance of non-execs especially if the senior non-exec is perhaps drafting it using the other non-exec's self assessments.

Relationship with shareholders and others

There is a great danger that if non-execs are widely involved in communication outside the organisation they will make errors. It is one thing to know enough to challenge it is quite another to explain the company's strategy to the shareholders or to city institutions. This should remain firmly within the ambit of the executive (as extended by inclusion of relevant part timers see above).

As indicated above the senior independent role is more important than the chair for ensuring that non-execs have the support, information and training that they require. There is no reason why the chair should not also encourage this but not all of them are good at it.

There comes a point where the support (albeit with challenge) of the executive team is not sufficient for the business. Perhaps a new CEO is needed or perhaps something less major but sensitive is concerning the non-execs. It is all too easy for the non-execs to get into a huddle and this very quickly causes division and uncertainty. In those industries where non-executives are a majority of the board it can become quite destabilising. As a result I do not believe that boards should have a majority of non-execs but they should ensure that their voices are heard in full board and any unresolved dissent should be published through their annual report. Perhaps this too should be reflected in the debate as to whether non-execs should have the same levels of legal liability as the executives.

It might be useful to establish a ratio of non-executive to executive members on a board. As a suggestion I believe non-executive (on my definition excluding chairman and high profiles) should exceed 30%.

Support

Information for non executive directors is important. Too often they are bombarded with what they don't want and deprived of what they do need. The use of corporate intranets may well be a way forward here giving all directors access to key data as required and selected by the director himself.

Smaller listed companies

These, and indeed unlisted companies, may well benefit from non-executive input. Apart from very small companies consideration should be given to all those with more than x participators having non-executive board members.