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Dear Jack,

Non-executive Directors Review

Very many thanks for sending me a copy of your Consultation Paper.

In this submission I will concentrate on three areas:

1. Chairman
2. Appointing non-executives
3. Attracting non-executives

1. Chairman

- i) The effectiveness of the role of a non-executive director is very much impacted by the role of the chairman. Your paper makes some reference to this but I regard it as a critical condition precedent.
- ii) Two of the most critical functions a chairman fulfils are:
 - a) (i) To act as a guiding hand for the chief executive; and
 - (ii) To monitor the actions of the chief executive, to assist where necessary and to review the chief executive's performance on a regular basis. The chairman needs to have a good working relationship with him/her.
- b) To ensure that a balanced team of non-executives is assembled and that he/she draws the best out of that team and gets the right workings between the team of non-executive directors and the executive directors.

If the chairman fails in either of these two responsibilities, the role of the non-executive director becomes extremely difficult and probably moves to having to find a new chairman!

- iii) Full-time executives should not be chairmen of other companies. Their prime responsibility should always be with the company which employs them full-time, whereas the needs of a chairman in another company may become very absorbing on occasions.
- iv) It is most unlikely that an individual can be chairman of more than two major companies.

These two latter points are made because at a moment of pressure a chairman may have to give unlimited time to the company concerned and to work with both executive directors and non-executive directors to lead them.

2. Appointing Non-Executives

1. To assist in their overall understanding of the Group, the best position is arrived at when the non-executives serve on each of the board committees. It is important that all the non-executives understand the thinking on remuneration as well as the workings of the audit committee, and attendance at both is the best route for this.
2. The chairman should not chair either of these committees but should probably chair the nominations committee if it is a separate unit.
3. Although non-executive directors do not necessarily need a financial background, they must have a basic understanding of financial matters and it may be that on appointment some brief external training needs to be provided for them.
4. If the non-executive has a full-time executive role he should not consider having more than two non-executive positions.

If the individual has no executive position, the number taken on depends to some extent on where they are located as well as the complexity of the organisations.

To live in London and have one in the US and one in Italy would very much restrict the number of UK appointments. To have them all based within 20 miles of where the individual lives gives a much greater capacity.

The most important thing is that in the event of need the non-executive director is available to attend in the company's office within 24 hours.

Account also needs to be taken of an individual's activities on non-corporate matters. Are they sitting on government review bodies? Are they giving a lot of time to other quasi public sector appointments?

I do not think you can be prescriptive as to the number of appointments.

5. The number of non-executives on a board can affect the amount of commitment from some individuals. Most boards should be able to operate with five or six non-executive directors. The more you have the more likely that the attendance of some is less regular.

3. Attracting non-executives

- (a) One of the most restrictive criteria is that many FTSE100 boards will only consider having non-executive directors who have sat on FTSE100 companies.

Certainly it should be helpful to have someone with that experience, but consideration should also be given to bringing in individuals from non-corporate areas such as universities.

- (b) In appointing a non-executive the company must be clear as to what particular experience they are looking to draw on from the appointment. To fill a board with non-executives with wide general experience but no specific areas which might help the company may not add value.
- (c) The area which is likely to concern most candidates for non-executive positions is that of directors' liability. To attract the best and most experienced non-executives consideration must be given as to how to limit their liability as director of the company. If they continue to feel they may be as exposed as the non-executive directors of Equitable Life have been, then the pool of candidates for non-executive positions will very rapidly dwindle.

It may well be that a number of non-executives now decide that after completion of their first three-year term they will not renew in the light of the perceived increased risk.

- (d) The remuneration of a non-executive should be geared to the individual experience which they bring and should ensure that they are able to give the amount of time necessary for them to be well-informed and to fulfil their role and be available at short notice to the chairman and other colleagues on the board. An element of shares as part of their remuneration gives a good message.

- (e) The combined code in most cases seems to work well, and the structures which have been recommended are usually effective. The performance of non-executives should certainly be reviewed each year through a discussion with the chairman who should have received input from the executive directors via the chief executive.

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