

## Krishnan, Sudesh

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**From:** belinda.chavasse@ubs.com  
**Sent:** 31 August 2004 15:45  
**To:** Myners, Review  
**Subject:** From Sir Derek Higgs

I welcome the opportunity to respond to your consultation document.

My comments on the questions posed are as follows:

Q1: Much of the Combined Code addresses practical behavioural issues stemming from the important principles of separation of function, independence and transparency. As such, a significant proportion of it is of relevance more widely than just to the listed company sector, including to mutual life offices. "Comply or explain" (or, even better, "apply or explain") is a flexible, adaptable concept which puts the onus on governance where it should be - with the board. Simply publishing how individual mutual life offices measure up to a common template of best practice has value. Engagement, by policy holders, intermediaries on their behalf, or by regulators to promote accountability is a related, but separate issue. Progress here will probably require promotion of voting by policy holders at general meetings on the adoption (or not) of appropriate reports, on governance, risk strategy etc.

Q2: It ought to be a relatively simple matter (through regulatory requirement akin to the Listing Rules) to ensure a Code approach comparable to that for listed companies is followed by mutual life offices.

Q3: I see no reason why a "Code" type unitary board structure should not be effective, provided there is adequate specialist knowledge amongst the NEDs and they have access to appropriate, independent technical support. NEDs don't have to know more about any business than its management - they have however to know enough to know when to worry, at which point they need specialist help. For mutual life offices there may be scope for a committee equivalent to the investment committee of a pension fund to deal with "strategic" risk management issues: this would have access to independent advice. Presumably the Morris Review will address this possibility.

Q4: See 3 above.

Q5: See 3 above.

Q6: See the discussion in my Review and the subsequent DTI consultation on directors' and auditors' liability.

Q7: Even advisory votes concentrate the mind of a board, especially when subject to the court of public opinion provided by the financial press. Conflicts of interest between policy holders can be kept to a minimum by keeping mandatory voting to a minimum range of topics. It is, however, hard to see what kind of intermediary has the capacity or incentive to represent the general body of policy holders in the ordinary course, ie outside demutualization or similar, without the risk of unintended consequences.

Q8: No comment.

Q9: No comment.

Q10: Only by providing the backstop to ensure offices publish a "Corporate Governance Report", a "Risk Management Strategy Report" or similar and possibly pro forma performance information.

Q11: See Q7 above - however, rating agencies abhor a vacuum and more comprehensive and standardised information of the kind referred to in Q10 above may allow tables or indices of some kind to be prepared and published for consumers and intermediaries.

Q12: Such theoretical advantages as mutual businesses enjoy have too often been thrown away by inadequate and unaccountable management prone to building themselves

monumental head offices - which is why I welcome this review. Leaving aside the benefit of diversity and choice in a market place, my view is that the separation of the shareholders' role in providing risk capital from the customers' interests in having access to that capital provides a discipline which, when managed effectively, is more efficient than a comingled mutual structure with its ambiguities between the theory of cost free capital and the practical reality that policy holders must provide that support themselves. "In theory there is no difference between theory and practice, but in practice there is."

Q13: No comment.

Q14: No comment.

Q15: No comment.

Q16: No comment.

Yours sincerely

Sir Derek Higgs

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