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FAO: Sir David Walker
Walker Review
C/O Financial Services Authority
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Dear Sir David,

Walker Review

The GC100 welcomes the opportunity to contribute to the Walker Review. Following extensive discussions amongst our members we set out below our views on current corporate governance and any changes we believe that should be made. We have not commented on Remuneration Policy.

1. Realistic expectations of what "Governance" can achieve

- 1.1 We believe that there is an unrealistic expectation amongst certain stakeholders and commentators that more "Governance" will guarantee success or perhaps more pertinently, no failure. The events of the last 12 months do present an important opportunity to review how robust corporate governance processes are and to learn what might have been done differently. However, businesses have to manage risk (that is often their *raison d'être*) and risk judgments must fall to the Executives as part of management by them of the business.

The NEDs' role is to challenge but ultimately the Executive are, and should be, the ones who actually make and action these risk judgments. For financial services companies in particular, there are extensive regulatory requirements in addition to the requirements prescribed by the Code. We feel that where there were perceived governance weaknesses that contributed to the current crisis, it was in the application of the Code rather than a lack of prescription within the Code itself. Adding extra governance could just lead to box ticking and hamper effective scrutiny by NEDs by taking up time with form rather than looking at substance.

2. The Role of NEDs

- 2.1 A NED should bring independent and objective review, and a diverse range of experience. A NED should not be there to provide a second chain of decision making alongside the Executive. To expect NEDs to do this would undermine the Executive and would be impossible to reconcile with the part time nature of the NED role given the complexity of most modern large corporates. To create a full time NED would

essentially be creating another ED. This would confuse accountability and would lose the independence, objectivity and contemporary other experience that NEDs bring. It is essential that the available gene pool of NEDs is not further reduced to companies through prescription in the Code.

- 2.2 Although Boards and NEDs are clear on what is expected of them, we feel that some clarification of the role of the NED is needed for the wider audience. There may be too high expectations in some quarters as regards what should be the role of a NED. There has been a suggestion that a useful addition to the Code may be a statement of NED responsibilities so that there is consistent understanding of the NED role, but we believe it is important that there is no specific “prescription” around those NED responsibilities.
- 2.3 One of the issues that may have contributed to the recent problems was the capability of management, and its ability to effectively manage risk. Key to the effectiveness of corporate governance is the calibre of the individuals involved, and that they have a clear understanding of their role and responsibilities and the tools necessary to discharge their responsibilities effectively. A prime responsibility of the NED is to ensure the calibre of the Executive and potential successors. The Code already provides for this. In any event, in practice, NEDs should see this role as one of their key duties and sufficient time must be spent by NEDs in assessing the talent pool available and ensuring the competence and strength of management, particularly in the increasingly complex environment.

The task is to ensure that “best practice” is understood by Boards. The Chairman's responsibility to ensure the Board works effectively and board evaluation is already enshrined in the Code although the need to ensure the effectiveness of board evaluations (including peer evaluation) should be encouraged. The ability of NEDs to bring the experiences of one Board to the practice of another, together with peer evaluation, will assist in this.

- 2.4 A Board comprising a proportion of NEDs with specific industry experience enables informed judgments. However, further prescription around NED independence would be at the cost of industry specific experience on the Board. It is important that amongst the NED talents available to the Board is sufficient in depth understanding of the Company's business.
- 2.5 Companies should ensure that their NEDs are well informed on the Company's issues. However again, we do not believe that further prescription is required to achieve this. For example, it should be seen as good practice that all Board papers are delivered sufficiently in advance of a meeting. Further, that they should be accurate, timely and clear. The Code already provides for the Company Secretary's responsibility for good information flows to NEDs.
- 2.6 The Code requires companies to facilitate NED access to independent professional advice and the ongoing updating of Board skills and knowledge, and in the case of NEDs, familiarity with the business. NEDs should be encouraged to take up the opportunity of seeking independent professional advice in appropriate circumstances, where they judge it necessary to discharge their responsibilities as directors, particularly as the issues being considered are increasingly complex and technical.

Companies need to be free to do this in a way that is appropriate for their organisation: a prescribed 'one size fits all' approach will not be effective. Hence we are not in favour of a prescriptive NED "office" being set up which we believe could create a "them and us" culture, inhibit decision making and blur accountability.

3. Risk Management

- 3.1 Risk Committees at Board level - the Code should not prescribe how Companies should manage and report risk at board level. Some organisations have Board level risk committees, some of which have NED membership and some of which do not. A number of organisations have a combined audit and risk committee, while other organisations run separate committees. There is no "one size fits all". Companies should be left free to manage risk in a way that they feel appropriate in this new very risk aware environment and in a way that is appropriate for their organisation. There is a risk that additional prescription in the Code may lead to a tick box approach.
- 3.2 There are concerns that transparency of risk reporting either to shareholders or elsewhere could easily become a pro forma exercise. With a Remuneration report there are hard facts that are much easier to report on than judgments on risk. The scope of the annual Corporate Governance Report could however reference how the Board reviews and monitors risk appetite. In some companies or industries, an independent "risk consultant" could be a valuable addition to a risk committee and to NEDs as a benchmark but to make this compulsory would again be counterproductive encouraging form over substance and it may undermine ED accountability for risk. Each board should decide for themselves whether this is something that they need.

4. Unitary versus Split Boards

- 4.1 We feel that the unitary board concept works well, and we see no obvious advantage in moving to a supervisory board format. There is no evidence to suggest that jurisdictions with supervisory boards have fared better in the crisis. It is difficult to see how a supervisory board would have the level of management engagement and information to be more effective than a unitary board.

5. Institutional Shareholders

- 5.1 The Code already obliges institutional shareholders to engage in dialogue with Companies, as well as the Board's responsibility to ensure that shareholders' views are heard. We do not believe that further prescription would increase meaningful dialogue. Institutional shareholders themselves are increasingly adopting a more involved stance, and practice rather than prescription is to be preferred.

6. Conclusion

- 6.1 Ultimately the consensus is that there is already adequate prescription around corporate governance practices, and the most effective change would be to ensure that NEDs and Boards exhibit the right behaviours, in particular creating an environment where constructive challenge is always welcomed and encouraged. These behaviours should be encouraged rather than prescribed. In practice, it is extremely difficult to try

to codify proper behaviours. Further, there is a risk that the available gene pool of NEDs would otherwise be further reduced and a form over substance culture result.

Yours sincerely
For and on behalf of the GC100

A handwritten signature in black ink, appearing to read 'G Timms', written in a cursive style.

Geoffrey Timms
General Counsel
Legal & General

GC100

The GC100 was launched in March 2005 and currently has over 100 general counsel and company secretary members. The main purpose of the GC100 is to act as the high-level collective voice for group general counsel in FTSE 100 companies, on major issues of legislative and policy reform and matters of common interest.