



Myners Review
Room 4/16
HM Treasury
1 Horse Guards Road
LONDON SW1A 2HQ

20 September 2004

Dear Sir/Madam

REVIEW OF THE GOVERNANCE OF MUTUALS

I write to convey the comments of ACCA, the Association of Chartered Certified Accountants, on the matters raised by the above consultation exercise. We address only those aspects of the consultation paper which, in our view, give rise to fundamental issues of corporate governance.

Q1 To what extent does the current guidance on corporate governance, particularly the Combined Code, provide an appropriate framework for mutual life issues?

The Combined Code (CC) is perfectly relevant to life offices to the extent that its guidance calls on governing boards to organise their affairs in a way which minimises the risk of conflicts of interest and promotes the cause of efficient management of the business. It is perhaps less directly relevant in the sense that the underlying purpose of the CC is to satisfy shareholders, particularly the institutional investors who make constant choices on where to invest and when to do so, that their company is being run in accordance with high and transparent governance standards. If a life office has no shareholders, then its public compliance with the CC will not provide assurance or information which parties can use to make governance-related decisions. We suggest therefore that the CC might usefully be at least adapted to tone down its emphasis on companies needing to take

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specified steps as a means of reacting to perceived shareholder concerns.

The concerns of policy holders in life offices should be seen as distinct from the concerns of shareholders in a listed company. The latter will be looking for an appreciation in value of their holding, or regular periodical dividends, or both. They have rights regarding the governance of the company and some at least of them will be concerned to exercise those rights on a regular basis in order to improve the performance of the company. Some shareholders will also be motivated to use their governance rights for broadly political purposes. As we understand it, the concerns of policyholders in a life office are essentially to be assured that their institution is being managed in a prudent and efficient manner which best secures the long-term value of their investment. Those elements of the CC which focus on efficient and responsible management, e.g. internal control and involvement of audit committees, are in our view equally applicable to life offices. But other elements, such as the insistence on short-term contracts and regular turnover of non-executive directors, are in our view not so relevant and their application to life offices should be re-examined. In the light of the Equitable Life case, we consider it would be appropriate for the emphasis in the governance of such bodies to be more on ensuring technical expertise than on satisfying democratic niceties.

Q2 What is the best way of securing mutuals' compliance with corporate governance best practice?

We would agree that life offices should be required to declare their compliance or otherwise with any new or adapted code of practice. This should be seen as an additional step in the process of assuring policy-holders that their investments are being managed soundly.

Q5 and 6 The role of non-executive directors

Non-executive directors are invited to join boards for two main reasons. The first, and more traditional reason, is that they stand to bring to the board experience and/or expertise which it is currently lacking and which, it is thought, would benefit the company. The second reason, which is a more recent rationale, is that non-executives, whatever their individual backgrounds, should provide the board with a more independent and objective perspective both on the company's business operation and on its overall governance. In this spirit non-executives play a substantial role under the CC in minimising conflicts of interest at board level.

We consider that both these reasons for appointing non-executives are sound. But the defects in the capabilities of the board identified by Lord Penrose underline that the oversight responsibilities of non-executives should not be at the expense of experience and expertise on their part. Directors under company law have equal responsibilities whether they are executives or not, and as long as the UK retains the unitary board model, it should not be considered sufficient for non-executives to delegate all responsibility for operational matters to executives. Another relevant principle of company law, however, is that directors are not expected to be experts in all matters or even any matter, and they are only expected to bring to their company that experience and expertise which they actually have.

It is currently expected that the traditionally weak demands which UK company law makes of directors will be strengthened over the next few years. This will involve a basic expectation that any company director should conform to a standard of conduct which society should be entitled to expect from a person in that position. This new standard will, in our view, mean that directors of companies which engage in specialised lines of business should have a good if not expert understanding of the technicalities of that business. The forthcoming EU Recommendation on company directors also calls upon boards to ensure that there is an appropriate balance of skills and experience. We suggest that the future regulation of life offices should proceed in line with these developments. Accordingly, there should be more emphasis placed on the need for the boards of such bodies to have a good level of expertise and/or experience in this specialised sector, and for that expertise and experience to be spread around the whole board. Directors, to, should be expected to satisfy themselves that they have the qualities necessary to play an effective role on the board.

Under the CC, a board should be 'effective'. This should not be taken to mean to that all members of a board should be expert in all matters which are dealt with by it. We believe that it should mean, however, that it is the responsibility of each board to ensure that the quality of its decision-making is not weakened either by a lack of skills or by an inadequate spread of skills. This basic principle should be underlined in the case of specialist bodies such as life offices.

I trust these comments will be of help.

Yours sincerely

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