



JEB/BLC-SUB

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

E-mail: [myners.review@hm-treasury.gov.uk](mailto:myners.review@hm-treasury.gov.uk)

17 September 2004

Dear Sir

### **Myners Review of the governance of life mutuals**

The Institute's Business Law Committee has considered the above consultation document and responds as follows:

#### *General Comments*

#### **Specific Responses to the Questions in the Consultation Paper**

***Q1. To what extent does the current guidance on corporate governance, particularly the Combined Code, provide an appropriate framework for mutual life offices?  
Would another approach be more effective?***

We believe that the current corporate governance guidance and in particular the Combined Code provide an appropriate framework for mutual life offices.

***Q2. What is the best way of securing mutual life offices' compliance with corporate governance best practice?***

We believe that the best way of securing compliance is to require such entities to make the same corporate governance statements as are required by quoted companies. To that effect, the FSA should introduce a requirement for them to do so.

***Q3. In your opinion should the ownership structure or the nature of the business conducted by a life mutual affect the composition or structure of its board? If so how?***

No, we believe that the same principles should apply, regardless of whether the entity is a company or a life mutual.

***Q4. In your experience is the information and advice (including actuarial advice) used by the non executive directors of life mutuals sufficient – in terms of quality and relevance – to enable them to exercise effective oversight of the executive? In what ways might it be improved? If more information and advice is needed, what are the resource implications? Do similar issues arise for the non executives of other complex businesses, such as wholesale banking or science based businesses?***

We have no comments on the first three points. On the final point we believe that similar issues do arise.

***Q5. What is the role of the non-executive director in a complex or technical business? In particular what is their capacity to understand and to challenge the executive over technical aspects of the business?***

We believe that this question should refer to the role of the non executives as opposed to the role of a non executive. We believe that the same general principle applies to such entities in that it is vital to get the composition of the board properly balanced. Therefore, the Boards of such entities should include an element of non executives who have an expertise in the particular field to facilitate an environment for full and proper debate over technical aspects of the business.

***Q6. What can the owners of a complex or technical business reasonably expect of its non-executive directors? How would you characterise the practical limitations of a non-executive director? What steps might be taken to codify what is reasonable and realistic in this context? Should executives and non-executives have the same legal duties to the company?***

We believe that the owners of a complex or technical business can expect non-executive directors to fulfil the same role they would in any business. Non executives should be allowed to make a balanced judgment and not be criticised for getting it wrong provided that they have not been negligent.

We have no comments on parts two and three of this question.

We believe that executives and non-executives should have the same responsibilities and legal liability although we appreciate that they have different duties to perform.

***Q7. What role should policyholders play in the running of mutual life companies? Are there practical barriers to policyholder participation in UK life mutuals? What action would be needed to allow more effective engagement?***

We have no comments on this point.

***Q8. Lord Penrose says that in a life mutual "...it is the policyholders who are the source of the risk capital for the enterprise." (chapter 20 paragraph 51). What does this mean for the relationship between a mutual life office and its policyholders?***

We have no comments on this point.

***Q9. Lord Penrose acknowledges that the FSA's work since 1997 "...has sought to anticipate many of the lessons that might be drawn by this inquiry and it should come as no surprise that it has largely succeeded in that." (chapter 30 paragraph 3). In so far as corporate governance is concerned do you agree?***

We have no comments on this point.

***Q10. Is there a further role for the FSA to play in improving firms' corporate governance?***

We have no comments on this point.

***Q11. Listed companies are subject to the influence of their shareholders particularly large shareholders and the risk of takeover. What market forces are most relevant for mutual life offices? How effective are they in promoting good performance and how might they be enhanced?***

We have no comments on this point.

***Q12. Do specific barriers exist to the success of mutual businesses in the UK? If so, how might they be addressed?***

We have no comments on this point.

***Q13. What are the forces that drive de-mutualisation? What are the implications of de-mutualisation for members and customers?***

We have no comments on this point.

***Q14. What specific governance arrangements currently apply to other financial mutuals? In what ways do their governance arrangements differ from those that apply to life mutuals? Which if any of the options for life mutuals could be applied more widely in the financial mutual sector? What would the consequences be?***

We have no comments on this point.

***Q15. Do small, affinity group based, mutual life firms face different governance issues from the largest firms in the sector?***

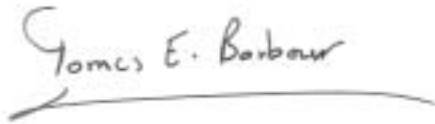
We have no comments on this point.

***Q16. Are you aware of effective governance regimes for life (or other) mutuals in other countries? Is this the result of a formal (regulatory or government) requirement or is it voluntary driven by the industry? Are there aspects of the arrangements in other countries that it would be desirable and practical to adopt in the UK?***

We have no comments on this point.

We trust that our comments are of assistance to you. If you wish to discuss any of these further, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in cursive script that reads "James E. Barbour". The signature is written in dark ink and is positioned above a horizontal line that serves as a separator.

JAMES E BARBOUR  
Assistant Director, Accounting & Auditing  
Secretary to the ICAS Business Law Committee