

Sir Christopher Hogg  
Chairman  
The Financial Reporting Council  
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3 March 2010

By email: [codereview@frc.org.uk](mailto:codereview@frc.org.uk)

Dear Sir Christopher

## CONSULTATION ON THE REVISED UK CORPORATE GOVERNANCE CODE

We write on behalf of Standard Life plc, as a major UK FTSE 100 listed company, and its wholly-owned subsidiary Standard Life Investments Limited, as a major institutional investor. Both companies welcome the Financial Reporting Council's ("FRC") aim to ensure that the revised UK Combined Code on Corporate Governance ("the Code") continues to reflect changing governance concerns and practices and economic circumstances and are keen to offer their views on the issues for consultation.

During 2009, we spent significant time developing our responses to the recommendations proposed in the Walker Review, and the FRC's reviews of the impact and implementation of the current Code and we are keen to see the FRC bring the review of the Code to conclusion.

The key points arising from our review of the matters for consultation are:

- we do not believe that Walker's BOFI specific recommendations should be applied automatically to all listed entities;
- we believe that the final recommendations arising from the Walker Review should, wherever reasonable, be consistent with and incorporated in the Code;
- we note the retention of the "comply or explain" approach and therefore encourage institutional investors to consider the detail of "explanation disclosures" more fully;
- we do not believe that annual re-election votes on the Chairman or the full Board strengthen shareholder accountability significantly and we believe that they could undermine the long-term stewardship of a Company and stability of its Board, as well as the discipline of its succession planning processes;
- we do not believe that the proposal to disclose a firm's "overall financial strategy" is precise enough to result in substantial and informative disclosures.

Standard Life Investments Limited, tel. +44 131 225 2345, a company registered in Scotland (SC 123321) Registered Office 1 George Street Edinburgh EH2 2LL.

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Our review was conducted from the points of view of both Standard Life plc as an issuer of securities, and Standard Life Investments Limited as an influential institutional investor and we make the following general and detailed points.

## **Section A – Proposed changes to the Code**

### **Name of the Code**

We are supportive of the proposed change of name of the Code to be “The UK Corporate Governance Code”.

### **Structure of the Code**

We are supportive of the proposed changes to the structure of the Code to give more prominence to some of the factors which underpin an effective board and to reflect some of the recommendations made by Sir David Walker which would apply to all entities. We agree that the changes to the introductory section reinforce “important messages about the way the Code should be viewed and applied”.

### **Removal of section E (Institutional Shareholders)**

We support the removal of Section E only on the basis that, in its place, a robust and comprehensive Stewardship Code is implemented, following an appropriate period of consultation.

### **Changes to the Main Principles**

We agree that the upgrading, division and addition of the specific principles mentioned is reasonable.

### **Changes to the provisions**

We are generally supportive of the small number of new provisions and have commented on them in more detail within our “Section B” response below.

### **Disclosure requirements**

We note the FRC’s request to comment on whether the Code should be amended to allow companies a choice of whether to put the full corporate governance statement on the website and a summarised version in the annual report. We believe it is progressive to encourage the increased use of a company’s website and recognise that it is easier for shareholders and investors to access such information via the website, rather than by reference to a hard copy annual report. That said, it is important that the summarised corporate governance statement in the annual report should not be ‘devalued’ by increased website disclosure. The FRC should provide authoritative context to prevent this.

From the point of view of the preparer/issuer of the information, the full information has to be prepared in either case. If a summary then needs to be prepared for specific inclusion in the annual report, we would encourage the FRC to issue guidance on what they would expect to see included in that summary.

### **Costs and Benefits**

We believe that some of the provisions in the revised Code will bring increased direct and indirect costs to companies. In particular, the regular external facilitation of the board effectiveness review could incur significant costs in terms sourcing and engaging a provider and in carrying out and completing the engagement. The benefits arising from this expense will depend very much on the quality of the findings and the strength of the action plan. Equally, every year, there could be additional administration costs in preparing AGM voting documentation in respect of every member of the board. We note that the FRC intends to publish a regulatory impact assessment when issuing the final Code and would encourage the FRC to make this as comprehensive as possible.

### **Other actions resulting from the review**

At this stage, we support the other actions identified from the review and look forward to considering the changes which will be proposed. In particular, Standard Life Investments looks forward to contributing to the development of the Stewardship Code.

### **Section B – The draft revised Code**

#### **“Comply or Explain”**

In our recent response to the review of the Code’s implementation, we recommended that the FRC should revisit whether it would be reasonable to amend the “comply or explain” requirement to become an “apply or explain” requirement. We note that the FRC continues to believe that the “comply or explain” approach is appropriate but we would like to encourage the FRC to continue to review how this is interpreted. We believe that there are industry examples where “comply or explain” disclosure has been unfairly interpreted by the media as disregard for governance standards, whereas the disclosure actually represented a full and reasoned explanation supporting a board decision.

#### **Main Principles**

Unless we have made specific comments, we are supportive of the proposed amendments.

#### **B.4.1 – “As part of this (*the induction*) directors should be offered the opportunity to meet major shareholders”**

We support this principle, and believe that there is value to institutional investors in having the opportunity to meet new directors, and directors who have changed role – e.g. following their appointment as SID, as it allows them to form a view on a director they may then be asked to vote on at the AGM, and it allows them to raise any concerns with the director at an early opportunity. We also believe that there is value in directors meeting with major shareholders more regularly once they have had more experience of being a director of the company. We see a cross reference here to principle E.1 – “**the chairman should ensure that all directors understand their major shareholders’ issues and concerns**”. We would encourage the FRC to reflect these principles, in a complementary manner, in the Stewardship Code.

**B.4.2 – “The chairman should agree and regularly review a personalised approach to training and development with each director”**

We would ask the FRC to consider providing additional guidance to this proposed principle so that a balanced approach and effective result can be achieved. “Training and development” is an extremely wide term and the UK population of executive and non-executive directors is very varied in knowledge and experience. We also see some challenge in drafting useful but non-personal disclosure on this principle.

**B.6.2 – “Evaluation of the Board should be externally facilitated at least every three years”**

We commented at some length on this area in previous submissions and our view remains unchanged.

Standard Life plc remains fully committed to undertaking a formal annual board evaluation process, and to reporting the results of the review in the Annual Report. Equally, we believe that the process must evolve and must be regularly refreshed and renewed. However, we do not believe that the review process would be significantly strengthened by introducing the principle that it is externally facilitated at least every three years. We acknowledge that there are likely to be benefits in having the review independently facilitated, as it may lead to an increased openness in contributions, and bring additional external benchmarking not available in house, but we do not believe that there are sufficient benefits from the exercise to justify the proposed external-use timescale. In addition, the company may incur significant cost in having this review externally facilitated.

**B.7.1 – “All directors should be subject to annual election by shareholders” or B.7.1 – “The Chairman should be subject to annual election by shareholders” and “Non-executive directors who have served longer than nine years should be subject to annual re-election”.**

Again, we commented at some length on this area in our 2009 submissions and our view remains unchanged. We believe that it is satisfactory for all directors to be re-elected at intervals of no more than three years after their appointment and do not see a need for either of the proposed principles.

We believe that a well-run company recognises the importance of having appropriate board and chairman succession plans in place which aim to reach a balance of both stability and renewal. In addition, we believe that the succession to the chair, in particular, is a significant exercise requiring much planning and consideration to ensure appropriate accountability and maintain board continuity. In our view, a company does not consider lightly the succession of the chairman or any of its board members, and will always aim to appoint the best available candidate.

We recognise the context which led to these proposed principles but we are concerned that they could result in a requirement to remove the chairman or other members of the board (depending on the result of the re-election vote), as a consequence of a particular reaction, rather than as a considered shareholder decision which is in the best interests of the company.

It would be very unfortunate if this proposed principle were to contribute to short-term boardroom behaviours.

As an alternative, we would encourage the revised Code to take account of and give due prominence to the opportunities offered by the introduction of the Shareholder Rights Directive ('SRD'). If shareholders have issues regarding the performance of the chairman of the company or the chairmen of the various board committees or any other board directors, the SRD has provided shareholders with increased means to express these concerns by giving them the right to raise questions for proper discussion at the AGM as well as easier means of raising resolutions to be put to a vote at the AGM.

**C.1.2 – "The directors should include in the annual report an explanation of the basis on which the company generates revenues and makes a profit from its operations (the business model) and its overall financial strategy".**

We note the guidance that this explanation is likely to be made in the Business Review in accordance with s 417 of the 2006 Companies Act and we believe that generally the current Companies Act requirements should be comprehensive enough to address this. We recognise that disclosure of the "company's business model" may be informative provided it is written in a non-boiler plate manner that enables the reader to identify and set in context the core elements. In this context, it may be sensible to delete the reference to "its overall financial strategy" since it is imprecise and lends itself to disclosures that lack substance.

**C2 – The board should maintain a sound system of risk management and internal control" - C.2.1 – "The board should satisfy itself that appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company".**

We support comprehensive provisions in this area. Although we believe that the board's responsibility for risk management is clearly established in the current Code, it is useful that this may be extended to cover "risk appetite and tolerance" specifically.

In our submission to the Walker Review, we expressed our support for the introduction of a Board Risk Committee, where it is appropriate to do so and although this may not be beneficial for all UK listed companies, Standard Life plc will put in place a Board Risk Committee with effect from 1 April 2010. We believe that risk committees should establish the correct level and balance of oversight and involvement. In particular, we do not believe that it should be the intended role of the committee to micro-manage specialist risks or operational risks. Rather we believe that it should focus its activities on reviewing the processes to identify and manage strategic risks in particular.

On risk reporting, we support the FRC's intention to rationalise existing disclosure requirements. Currently we present risk management information to comply with the relevant requirements of the Business Review (Companies Act 2006) and IFRS reporting as well as the Code and Turnbull Guidance. Understanding the nature of these differing requirements, identifying an overall and comprehensive view of the risks the company is running and gaining an understanding of the framework which manages these risks, and its effectiveness, is challenging.

**Schedule A – “Consideration should be given to the use of provisions that permit the company to reclaim variable components in exceptional circumstances of misstatement and misconduct”**

We understand the background to including this guidance but we would recommend that the FRC defines further “exceptional circumstances of misstatement and misconduct”. Without some reasonable parameters, we believe that it would be very difficult to achieve a balanced level of interpretation of such provisions, and reasonable disclosure around their implementation. We also believe that the use of the word “exceptional” is unhelpful, as it implies that there may be “misstatement and misconduct” which is “unexceptional” and we do not believe this was the intended consequence.

**Section E/ Stewardship Code**

We welcome the consultation on the introduction of the Stewardship Code on the responsibilities of institutional shareholders and agents, and we hope that the final recommendations are clear with regard to status, ownership and maintenance of the Principles. We encourage the FRC to have regard to the consistency of style between the Stewardship Code and the revised Code, as well as to the timetabling of the introduction of the Stewardship Code so that the status and applicability of both documents is very clear. Standard Life Investments Limited will submit a considered response to the consultation.

**Conclusions**

Overall we support the FRC’s aim of strengthening current corporate governance processes in the UK. However, we are keen to reinforce that any revised or new principles should not be finalised without proper consideration of their practical application and likely efficiency, effectiveness, added value and increased accountability. Equally, we hope that prudential cost considerations and the risk of unnecessary bureaucracy are also taken into account.

We look forward to the publication of the revised Code and we hope that the above comments contribute to the consultation process. Please contact either of us if you wish to discuss any our comments further.

Yours sincerely

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& General Counsel  
Standard Life plc

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