

Corporate Governance Regulations under the spotlight again



December 2009

Since the Cadbury review of corporate governance for listed companies over 15 years ago the subject has never been off the agenda, and the UK's corporate governance regime is up for review once more.

Following a preliminary report in July 2009 Sir David Walker has now published his final report and recommendations on corporate governance in UK banks and other financial industry entities. The companies under the Walker spotlight have been given the acronym "BOFIs". In the preface to his report Walker states that he was asked by the Government to review corporate governance in UK banks in the light of the "experience of critical loss and failure throughout the banking system". The terms of reference were subsequently extended so that the review should also identify where its recommendations are applicable to other financial institutions.

At the same time the FRC has been conducting its biennial review of the Combined Code, which applies to companies whose shares are admitted to trading on the FSA's Official List. Following a progress report in July 2009 the FRC produced its final report earlier this week, together with a consultation on a proposed revised Code to take effect in 2010.

Below is a brief summary of the principal recommendations of the Walker Report. At the end of this note the Walker Report's final 39 recommendations are set out in full. We also consider the FRC's proposed amendments to the Combined Code.

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KEY THEMES OF THE WALKER REPORT

In the Report, the following key themes are identified:-

1. **The UK's unitary board structure and the Combined Code of the FRC remain fit for purpose** – the Report states that the "comply or explain" approach to guidance and provisions under the Combined Code provide the surest route to better corporate governance practice, although the relevant guidance and provisions require amplification and better observance, with some additional BOFI-specific elements to be taken forward through the FSA. The Report does, however, recommend legislation to require disclosure of the remuneration of senior employees;
2. The principal deficiencies in BOFI boards relate much more to **patterns of behaviour** than to organisation. In the view of Sir David Walker "the sequence in board discussion on major issues should be: presentation by the executive, a disciplined process of challenge, decision on the policy or strategy to be adopted and then full empowerment of the executive to implement. The essential "challenge" step in the sequence appears to have been missed in many board situations and needs to be unequivocally clearly recognised and embedded for the future. The most critical need is for an environment in which effective challenge of the executive is expected and achieved in the boardroom before decisions are taken on major risk and strategic issues." Walker believes that in order for this to be achieved, it will

require close attention to the composition of boards to ensure the right mix of both financial industry capability and "critical perspective from high-level experience in other major businesses". He also believes it will require a materially increased time commitment from non-executive directors overall and that the board should conduct and report on a regular evaluation of its performance;

3. **Board-level engagement in the high-level risk process** should be materially increased with particular attention to the monitoring of risk and discussion leading to decisions on the company's risk appetite and tolerance. Non-executive directors are to be required to focus on high-level risk issues in addition to and separately from the executive risk committee process and the board and board risk committee should be supported by a Chief Risk Officer with clear enterprise-wide authority and independence, whose tenure and remuneration are determined by the board. There should be a separate annual risk report to report on the activities of the board risk committee;
4. There is a need for **better engagement between fund managers acting on behalf of their clients as beneficial owners, and the boards of investee companies**. The Report states that this does not exclude business models that involve greater emphasis on active trading of stocks rather than active engagement on the basis of ownership on a longer-term basis. But there should be clear disclosure of the fund manager's business model and, where active engagement is the business model, the fund should commit to the Code on the Responsibilities of Institutional Investors, published in November 2009 by the Institutional Shareholders' Committee (to be referred to as the "Stewardship Code"); and
5. Against a background of defective control and serious excess in some instances, substantial enhancement is needed in **board level oversight of remuneration policies**, in particular in respect of variable pay and any associated disclosure. The Report recommends that the remit and responsibility of board remuneration committees should extend beyond executive board members to cover the remuneration structure and levels for all "high end employees " (ie. individuals who are executive board members or other employees performing a significant influence function for the company or whose activities have, or could have, a material impact on the risk profile of the company.) In addition it should include responsibility for setting the principles and parameters of remuneration policy on a firm-wide basis. The remuneration of "high end" employees in listed UK banks (and FSA-authorized banks which are UK-domiciled subsidiaries of non-resident entities) should be disclosed, from 2010 onwards, on a banded basis starting at a threshold of £1million, although the Report does not recommend identifying the packages of individual employees on a named basis, as some commentators had called for. The Government has confirmed that it proposes to issue draft regulations in the New Year to give effect to this recommendation for the 2010 performance year. The preliminary report of July 2009 recommended specific rules, for immediate implementation, for the composition of variable remuneration packages and for the deferral and, in certain circumstances, clawback, of bonuses. The final report confirms the substance of this recommendation but proposes that it be incorporated as guidance into the FSA Remuneration Code next year, rather than being implemented at once. The FSA has said that the recommendations are broadly in line with its August 2009 remuneration code, which it intends to review in 2010 to reflect international developments.

Implementation of the Walker Report recommendations will require specific initiative, particularly by the FRC (see below) or FSA (who will deal with additional measures applying specifically to BOFIs).

"Comply or explain"

As mentioned above the Report emphasises the importance of safeguarding the flexibility provided in the Combined Code through the "comply or explain" approach. Walker believes that boards should be readier than they appear to have been to adopt a non-compliant position where they believe this to be substantially justified and can provide an adequate explanation for it. There is, however, a widespread belief that institutional investors give inadequate weight to explanations of non-compliance. The Report emphasises the need for greater shareholder attentiveness to such explanations while concluding that the "comply or explain" approach should continue as a core element in the UK corporate governance model. The importance of this approach is reflected in a specific amendment to the FRC's proposed amendments to the Combined Code (see below).

"Non-executive directors are to be required to focus on high-level risk issues....."

FRC REVIEW OF THE COMBINED CODE

In July 2009, the Financial Reporting Council launched a second consultation, along with a previous report, on its review on the effectiveness of the Combined Code. Since the last major changes to the Code in 2003 following the Higgs & Smith reports on non-executive directors and audit committees respectively, the FRC has reviewed the impact of the Code every two years. The latest review began in March 2009 and over 100 responses were received. In the light of further developments such as the Walker review mentioned above and the European Commission's Recommendation on the remuneration of executive directors of listed companies published in April 2009, the FRC decided to launch a further consultation on specific aspects of the Combined Code.

The initial responses agree that the Combined Code has resulted in clear improvements in governance standards and respondents expressed a strong preference for retaining the current approach of "soft law" underpinned by some regulation rather than moving to one more reliant on legislation and regulation. Almost all commentators also said that they continued to strongly support the principles-based approach of the Code and the flexibility provided by "comply or explain".

The FRC has now published its proposals on how it intends to amend the Combined Code to reflect both the final recommendations in the Walker Report and other issues raised by respondents to its earlier consultations. The Chairman's Preface to the proposed new Code includes a statement that, "Two principal conclusions were drawn by the FRC from its review. First, that much more attention needed to be paid to following the spirit of the Code as well as its letter. Secondly, that the impact of shareholders in monitoring the Code could and should be enhanced by better interaction between the boards of listed companies and their shareholders."

The Code is to be re-named "The UK Corporate Governance Code." The FRC intends to publish the revised Code in April or May 2010 and it is intended that, subject to the necessary changes being made to the FSA's Listing Rules and Disclosure and Transparency Rules, it will apply to accounting periods beginning on or after 29 June 2010.

Changes to the Code's structure

Section A of the Code is to be fundamentally re-structured to give more prominence to some of the factors that "underpin an effective board" and to apply some of the relevant Walker Recommendations on board composition and quality to all listed companies. The first two sections of the Code will be headed "Leadership" and "Effectiveness".

The existing Schedule B on liability of non-executive directors is to be deleted. The FRC now believes that other, more comprehensive guidance on this subject is available elsewhere.

Changes to the Code's content

- A new introductory section headed "comply or explain" will set out the FRC's view on this approach to corporate governance and how they hope companies and shareholders will use it. The FRC emphasises that the quality of corporate governance depends on behaviour not process and that a clear explanation of any non-compliance should encourage better engagement between companies and shareholders;
- Existing supporting principles on the roles of the chairman and non-executive directors and on the time commitment expected of all directors are to be upgraded to main principles. However, the draft new Code does not follow the Walker Report's recommendations of a minimum time commitment for a number of non-executive directors; it simply requires them to have sufficient time to perform their duties effectively;
- A new supporting principle is to be added concerning the need for directors to have appropriate knowledge of the company and access to its operations and staff so as to acquire a better understanding of its activities and the challenges it faces;
- New principle B.1 will state that the board should have the appropriate balance of skills, experience, independence and knowledge of the company to enable it to discharge its duties and responsibilities effectively;
- A second new principle will make explicit the board's responsibility for overseeing risk management and setting the company's risk appetite and tolerance;
- Principle A.1 is to be amended to make it clear that the board is responsible for the "long-term" success of the company. The supporting principles on the level and composition of remuneration are also to be amended to make explicit reference to the long-term success of the company;

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- The supporting principles on appointments to the board are to be amended to encourage boards to consider candidates from a wider "talent pool" and to incorporate the existing principle about progressive refreshing of the board;
- The Code will encourage the chairman to report personally in his annual statement as to how the principles (in Sections A and B) relating to the role and effectiveness of the board have been applied.

A small number of new provisions will be subject to the "comply or explain" disclosure requirement as follows:

- The chairman should agree and regularly review a personalised approach to training and development with each director;
- Evaluation of the board should be externally facilitated at least every three years, and any other connections between external consultants and the company should be disclosed;
- The board should satisfy itself that appropriate systems are in place to identify, evaluate and manage the significant risks faced by the company; and
- The annual report should include an explanation of the company's business model and overall financial strategy.

Other changes relate to:

- The role of the senior independent director which is "to provide a sounding board for the chairman and to serve as an intermediary for the other directors when necessary";
- Changes to the principles on remuneration – these reflect recommendations in the Walker Report and those published by the EU. The FRC believes that the most significant relate to the link between remuneration and risk policies and systems; the use of non-financial metrics when measuring performance; and considering arrangements for reclaiming variable components in certain circumstances. An additional change clarifies that all forms of performance-related remuneration are discouraged for non-executive directors, not just share options; and
- The provisions on dialogue with shareholders will clarify that engagement with private shareholders is to be encouraged, that compliance can be achieved with these provisions without setting up separate meetings for non-executive directors and that the provisions on disclosure of voting apply to votes cast on a show of hands.
- The FRC asks for a specific response on the annual re-election of directors and asks for views on whether this should apply only to the chairman or to all the directors. If the latter option is chosen then the provision which requires non-executive directors to be subject to annual re-election once they have served on the board for nine years would be deleted.

Disclosure

The FRC invites views on whether companies should have the flexibility to choose to disclose their compliance with the Code in either the annual report or to put the corporate governance statement on their website – or whether disclosure in the annual report should be the only disclosure route allowed.

Other actions

The FRC will also:

- take responsibility for a Stewardship Code for institutional investors as recommended by Sir David Walker, subject to consultation designed to ensure it can be operated effectively. This would result in existing Section E of the Code being removed;
- consider options for producing practical guidance on good practice engagement between companies and investors;
- carry out during 2010 a limited review of the Turnbull Guidance on internal control, on which there will be separate consultation; and
- commission the Institute of Chartered Secretaries and Administrators to work with others on its behalf to update the good practice guidance from the 2003 Higgs Report which addresses, for example, the roles of the chairman and non-executive directors. This may also deal with director development.

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Further information

The Walker Report and the FRC consultation on the Combined Code can be downloaded at

http://www.hm-treasury.gov.uk/d/walker_review_261109.pdf

<http://www.frc.org.uk/images/uploaded/documents/Consultation%20on%20the%20Revised%20Corporate%20Governance%20Code.pdf>

THE WALKER REPORT RECOMMENDATIONS

Recommendation 1

To ensure that NEDs have the knowledge and understanding of the business to enable them to contribute effectively, a BOFI board should provide thematic business awareness sessions on a regular basis and each NED should be provided with a substantive personalised approach to induction, training and development to be reviewed annually with the chairman. Appropriate provision should be made similarly for executive board members in business areas other than those for which they have direct responsibility.

Recommendation 2

A BOFI board should provide for dedicated support for NEDs on any matter relevant to the business on which they require advice separately from or additional to that available in the normal board process.

Recommendation 3

The overall time commitment of NEDs as a group on a FTSE-100 listed bank of life assurance company board should be greater than has been normal in the past. How this is achieved in particular board situations will depend on the composition of the NED group on the board. For several NEDs, a minimum expected time commitment of 30 to 36 days in a major bank board should be clearly indicated in letters of appointment and will in some cases limit the capacity of an individual NED to retain or assume board responsibilities elsewhere. For any prospective director where so substantial a time commitment is not envisaged or practicable, the letter of appointment should specify the time commitment agreed between the individual and the board. The terms of letters of appointment should be available to shareholders on request.

Recommendation 4

The FSA's ongoing supervisory process should give closer attention to the overall balance of the board in relation to the risk strategy of the business, taking into account the experience, behavioural and other qualities of individual directors and their access to fully adequate induction and development programmes. Such programmes should be designed to assure a sufficient continuing level of financial industry awareness so that NEDs are equipped to engage proactively in BOFI board deliberation, above all on risk strategy.

Recommendation 5

The FSA's interview process for NEDs proposed for FTSE 100-listed bank and life assurance company boards should involve questioning and assessment by one or more (retired or otherwise non-conflicted) senior advisers with relevant industry experience at or close to board level of a similarly large and complex entity who might be engaged by the FSA for the purpose, possibly on a part-time panel basis.

Functioning of the board and evaluation of performance

Recommendation 6

As part of their role as members of the unitary board of a BOFI, NEDs should be ready, able and encouraged to challenge and test proposals on strategy put forward by the executive. They should satisfy themselves that board discussion and decision-taking on risk matters is based on accurate and appropriately comprehensive information and draws, as far as they believe it to be relevant or necessary, on external analysis and input.

Recommendation 7

The chairman of a major bank should be expected to commit a substantial proportion of his or her time, probably not less than two-thirds, to the business of the entity, with clear understanding from the outset that, in the event of need, the BOFI chairmanship role would have priority over any other business time commitment. Depending on the balance and nature of their business, the required time commitment should be proportionately less for the chairman of a less complex or smaller bank, insurance or fund management entity.

Recommendation 8

The chairman of a BOFI board should bring a combination of relevant financial industry experience and a track record of successful leadership capability in a significant board position. Where this desirable combination is only incompletely achievable at the selection phase, and provided there is an adequate balance of relevant financial industry experience among other board members, the board should give particular weight to convincing leadership experience since financial industry experience without established leadership skills is unlikely to suffice. An appropriately intensive induction and continuing business awareness programme should be provided for the chairman to ensure that he or she is kept well informed and abreast of significant new developments in the business.

Recommendation 9

The chairman is responsible for leadership of the board, ensuring its effectiveness in all aspects of its role and setting its agenda so that fully adequate time is available for substantive discussion on strategic issues. The chairman should facilitate, encourage and expect the informed and critical contribution of the directors in particular in discussion and decision-taking on matters of risk and strategy and should promote effective communication between executive and non-executive directors. The chairman is responsible for ensuring that the directors receive all information that is relevant to discharge of their obligations in accurate, timely and clear form.

Recommendation 10

The chairman of a BOFI board should be proposed for election on an annual basis. The board should keep under review the possibility

of transitioning to annual election of all board members.

Recommendation 11

The role of the senior independent director (SID) should be to provide a sounding board for the chairman, for the evaluation of the chairman and to serve as a trusted intermediary for the NEDs when necessary. The SID should be accessible to shareholders in the event that communication with the chairman becomes difficult or inappropriate.

Recommendation 12

The board should undertake a formal and rigorous evaluation of its performance, and that of committees of the board, with external facilitation of the process every second or third year. The evaluation statement should either be included as a dedicated section of the chairman's statement or as a separate section of the annual report, signed by the chairman. Where an external facilitator is used, this should be indicated in the statement, together with their name and a clear indication of any other business relationships with the company and that the board is satisfied that any potential conflict given such other business relationship has been appropriately managed.

Recommendation 13

The evaluation statement on board performance and governance should confirm that a rigorous evaluation process has been undertaken and describe the process for identifying the skills and experience required to address and challenge adequately key risks and decisions that confront, or may confront, the board. The statement should provide such meaningful, high-level information as the board considers necessary to assist shareholders' understanding of the main features of the process, including an indication of the extent to which issues raised in the course of the evaluation have been addressed. It should also provide an indication of the nature and extent of communication with major shareholders and confirmation that the board were fully apprised of views indicated by shareholders in the course of such dialogue.

The role of institutional shareholders: communication and engagement**Recommendation 14**

Boards should ensure that they are made aware of any material cumulative changes in the share register as soon as possible, understand as far as possible the reasons for such changes and satisfy themselves that they have taken steps, if any are required, to respond. Where material cumulative changes take place over a short period, the FSA should be promptly informed.

Recommendation 15

Deleted from final recommendations.

Recommendation 16

The remit of the FRC should be explicitly extended to cover the development and encouragement of adherence to principles of best practice in stewardship by institutional investors and fund managers. This new role should be clarified by separating the content of the present Combined Code, which might be described as the Corporate Governance Code, from what might most appropriately be described as the Stewardship Code.

Recommendation 17

The Code on the Responsibilities of Institutional Investors, prepared by the Institutional Shareholder's Committee, should be ratified by the FRC and become the Stewardship Code. By virtue of the independence and authority of the FRC, this transition to sponsorship by the FRC should give materially greater weight to the Stewardship Code. Its status should be akin to that of the Combined Code as a statement of best practice, with observance on a similar "comply or explain" basis.

Recommendation 18

The FRC should oversee a review of the Stewardship Code on a regular basis, in close consultation with institutional shareholders, fund managers and other interested parties, to ensure its continuing fitness for purpose in the light of experience and make proposals for any appropriate adaptation.

Recommendation 18B

All fund managers that indicate commitment to engagement should participate in a survey to monitor adherence to the Stewardship Code. Arrangements should be put in place under the guidance of the FRC for appropriately independent oversight of this monitoring process which should publish an engagement survey on an annual basis.

Recommendation 19

Fund managers and other institutions authorised by the FSA to undertake investment business should signify on their websites or in another accessible form whether they commit to the Stewardship Code. Disclosure of such commitment should be accompanied by an indication whether their mandates from life assurance, pension fund and other major clients normally include provisions in support of engagement activity and of their engagement policies on discharge of the responsibilities set out in the Stewardship Code. Where a fund manager or institutional investor is not ready to commit and to report in this sense, it should provide, similarly on the website, a clear explanation of its alternative business model and the reasons for the position it is taking.

Recommendation 20

The FSA should require institutions that are authorised to manage assets for others to disclose clearly on their websites or in other accessible form the nature of their commitment to the Stewardship Code or their alternative business model.

Recommendation 20B

In view of the importance of facilitating enhanced engagement between shareholders and investee companies, the FSA, in consultation

with the FRC and Takeover Panel, should keep under review the adequacy of the what is in effect “safe harbour” interpretation and guidance that has been provided as a means of minimising regulatory impediments to such engagement.

Recommendation 21

Institutional investors and fund managers should actively seek opportunities for collective engagement where this has the potential to enhance their ownership influence in promoting sustainable improvement in the performance of their investee companies. Initiative should be taken by the FRC and major UK fund managers and institutional investors to invite potentially interested major foreign institutional investors, such as sovereign wealth funds and public sector pension funds, to commit to the Stewardship Code and its provisions on collective engagement.

Recommendation 22

Voting powers should be exercised, fund managers and other institutional investors should disclose their voting record, and their policies in respect of voting should be described in statements on their websites or in other publicly accessible form.

Governance of risk

Recommendation 23

The board of a FTSE 100-listed bank or life assurance company should establish a board risk committee separately from the audit committee. The board risk committee should have responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy, including strategy for capital and liquidity management, and the embedding and maintenance throughout the entity of a supportive culture in relation to the management of risk alongside established prescriptive rules and procedures. In preparing advice to the board on its overall risk appetite, tolerance and strategy, the board risk committee should ensure that account has been taken of the current and prospective macroeconomic and financial environment drawing on financial stability assessments such as those published by the Bank of England, the FSA and other authoritative sources that may be relevant for the risk policies of the firm.

Recommendation 24

In support of board-level risk governance, a BOFI board should be served by a CRO who should participate in the risk management and oversight process at the highest level on an enterprise-wide basis and have a status of total independence from individual business units. Alongside an internal reporting line to the CEO or CFO, the CRO should report to the board risk committee, with direct access to the chairman of the committee in the event of need. The tenure and independence of the CRO should be underpinned by a provision that removal from office would require the prior agreement of the board. The remuneration of the CRO should be subject to approval by the chairman or chairman of the board remuneration committee.

Recommendation 25

The board risk committee should be attentive to the potential added value from seeking external input to its work as a means of taking full account of relevant experience elsewhere and in challenging its analysis and assessment.

Recommendation 26

In respect of a proposed strategic transaction involving acquisition or disposal, it should as a matter of good practice be for the board risk committee in advising the board to ensure that a due diligence appraisal of the proposition is undertaken, focussing in particular on risk aspects and implications for the risk appetite and tolerance of the entity, drawing on independent external advice where appropriate and available, before the board takes a decision whether to proceed.

Recommendation 27

The board risk committee (or board) risk report should be included as a separate report within the annual report and accounts. The report should describe thematically the strategy of the entity in a risk management context, including information on the key risk exposures inherent in the strategy, the associated risk appetite and tolerance and how the actual risk appetite is assessed over time covering both banking and trading book exposures and the effectiveness of the risk management process over such exposures. The report should also provide at least high-level information on the scope and outcome of the stress-testing programme. An indication should be given of the membership of the committee, of the frequency of its meetings, whether external advice was taken and, if so, its source.

Remuneration

Recommendation 28

The remuneration committee should have sufficient understanding of the company’s approach to pay and employment conditions to ensure that it is adopting a coherent approach to remuneration in respect of all employees. The terms of reference of the remuneration committee should accordingly include responsibility for setting the over-arching principles and parameters of remuneration policy on a firm-wide basis.

Recommendation 29

The terms of reference of the remuneration committee should be extended to oversight of remuneration policy and outcomes in respect of all “high end” employees.

Recommendation 30

In relation to “high end” employees the remuneration committee report should confirm that the committee is satisfied with the way in which performance objectives and risk adjustments are reflected in the compensation structures for this group and explain the principles underlying the performance objectives, risk adjustments and the related compensation structure if these differ from those put in place and disclosed in respect of executive board members.

Recommendation 31

For FTSE 100-listed banks and comparable unlisted entities such as the largest building societies, the remuneration committee report for the 2010 year of account and thereafter should disclose in bands the number of “high end” employees, including executive board members, whose total expected remuneration in respect of the reported year is in a range of £1 million to £2.5 million, in a range of £2.5 million to £5 million and in £5 million bands thereafter and, within each band, the main elements of salary, cash bonus, deferred shares, performance-related long-term awards and pension contribution. Such disclosures should be accompanied by an indication to the extent possible of the areas of business activity to which these higher bands of remuneration relate.

Recommendation 32

FSA-authorized banks that are UK-domiciled subsidiaries of non-resident entities should disclose for the 2010 year of account and thereafter details of total remuneration bands (including remuneration received outside the UK) and the principal elements within such remuneration for their “high end” employees on a comparable basis and timescale to that required for UK-listed banks.

Recommendation 33

Deferral of incentive payments should provide the primary risk adjustment mechanism to align rewards with sustainable performance for executive board members and “high end” employees in a BOFI included within the scope of the FSA Remuneration Code. Incentives should be balanced so that at least one-half of variable remuneration offered in respect of a financial year is in the form of a long-term incentive scheme with vesting subject to a performance condition with half of the award vesting after not less than three years and of the remainder after five years. Short-term bonus awards should be paid over a three-year period with not more than one-third in the first year. Clawback should be used as the means to reclaim amounts in circumstances of misstatement and misconduct. This recommended structure should be incorporated in the FSA Remuneration Code review process next year and the remuneration committee report for 2010 and thereafter should indicate on a “comply or explain” basis the conformity of an entity’s “high end” remuneration arrangements with this recommended structure.

Recommendation 34

Executive board members and “high end” employees should be expected to maintain a shareholding or retain a portion of vested awards in an amount in line with their total compensation on a historic or expected basis, to be built up over a period at the discretion of the remuneration committee. Vesting of stock for this group should not normally be accelerated on cessation of employment other than on compassionate grounds.

Recommendation 35

The remuneration committee should seek advice from the board risk committee on specific risk adjustments to be applied to performance objectives set in the context of incentive packages; in the event of any difference of view, appropriate risk adjustments should be decided by the chairman and NEDs on the board.

Recommendation 36

If the non-binding resolution on a remuneration committee report attracts less than 75 per cent of the total votes cast, the chairman of the committee should stand for re-election in the following year irrespective of his or her normal appointment term.

Recommendation 37

The remuneration committee report should state whether any executive board member or “high end” employee has the right or opportunity to receive enhanced benefits, whether while in continued employment or on termination, resignation, retirement or in the wake of any other event such as a change of control, beyond those already disclosed in the directors’ remuneration report and whether the committee has exercised its discretion during the year to enhance such benefits either generally or for any member of this group.

Recommendation 38/39

Remuneration consultants should put in place a formal constitution for the professional group that has now been formed, with provision: for independent oversight and review of the remuneration consultancy code; that this code and an indication of those committed to it should be lodged on the FRC website; and that all remuneration committees should use the code as the basis for determining the contractual terms of engagement of their advisers; and that the remuneration committee report should indicate the source of consultancy advice and whether the consultant has any other advisory engagement with the company.

If you would like further details on any of the points mentioned in this note please contact your usual Travers Smith partner, or:

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