

Via Email

February 28, 2018

Catherine Horton
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

Re: Proposed Revisions to the UK Governance Code

Dear Ms. Horton:

I am writing on behalf of the Council of Institutional Investors (CII or Council), a nonprofit, nonpartisan association of public, corporate and union employee benefit funds, other employee benefit plans, state and local entities charged with investing public assets, and foundations and endowments with combined assets under management exceeding \$3.5 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$25 trillion in assets under management.¹

The purpose of this letter is to respond to the consultation entitled “Proposed Revisions to the UK Corporate Governance Code” (Proposed Revisions).² We generally support the Proposed Revisions and offer the following comments for your consideration in response to some of the specific questions raised.

Q5. Do you agree that 20 per cent is ‘significant’ and that an update should be published no later than six months after the vote?³

We currently do not have a membership approved policy or public position on whether 20 percent is “significant” for the purposes of a company taking actions “aimed at ensuring the company fully understands the reasons for shareholders voting against a resolution”⁴ As we indicated in response to the April 2014 proposed revisions:

As a general matter, the Council’s policies broadly countenance greater board accountability and engagement with shareowners. And the Council recognizes the essential nature of a company’s engagement and communications with its shareowners—especially those long-term investors of “patient” capital represented by the Council. As such, the Council’s Corporate Governance Policies advocate that all companies “establish

¹ For more information about the Council of Institutional Investors (“CII”), including its members, please visit CII’s website at <http://www.cii.org/members>.

² Proposed Revisions to the UK Corporate Governance Code (Dec. 2017), <http://frc.org.uk/getattachment/31897789-cef6-48bb-aea9-f46b8cf80d02/Proposed-Revisions-to-the-UK-Corporate-Governance-Code-Dec-2017-1.pdf>.

³ *Id.* at 9.

⁴ *Id.* at 9, ¶38.

mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors.”

In line with this expansive concern for board accountability and engagement, the Council’s policies require that boards take those actions recommended in majority-vote-winning shareowner proposals. In addition, the Council regularly corresponds with companies our members invest in when those companies fail to act on *majority-vote-winning* shareowner resolutions. In doing so, the Council urges these boards “to conduct a thoughtful and balanced analysis of the issues raised by any majority-vote-winning shareowner resolution,” including a review by independent directors and obtaining expert advice.⁵

Q7. Do you agree that nine years, as applied to non-executive directors and chairs, is an appropriate time period to be considered independent?⁶

We do not agree with Provision 15 of the Proposed Revisions which states “that where an individual has served on the board for more than nine years they are no longer considered independent.”⁷ Our membership approved policies provide extensive guidance on assessing a director’s independence.⁸ That guidance includes the following language:

Boards have an obligation to consider all relevant facts and circumstances to determine whether a director should be considered independent. These considerations include the director’s years of service on the board. Extended periods of service may adversely impact a director’s ability to bring an objective perspective to the boardroom.⁹

At this time we are not convinced that a nine year tenure is necessarily an impediment to director independence.¹⁰

Q8. Do you agree that it is not necessary to provide for a maximum period of tenure?¹¹

We believe, consistent with our response to Question 7, that the “requirement in Provision 18 [of the Proposed Revisions] to submit all directors for re-election annually,”¹² combined with a more extensive set of guidelines for assessing director independence along the lines identified in our policies,¹³ would be

⁵ Letter from Todd W. Noelle, Council of Institutional Investors, to Ms. Catherine Woods, Financial Reporting Council 4 (June 11, 2014) (footnotes omitted), https://www.cii.org/files/issues_and_advocacy/correspondence/2014/06_11_14_CII_letter_UK_financial_reporting_council.pdf.

⁶ *Id.* at 12.

⁷ *Id.* at 11, ¶53.

⁸ CII, Corporate Governance Policies § 7 Independent Director Definition (Updated Sept. 15, 2017), https://www.cii.org/corp_gov_policies#exec_comp.

⁹ § 7.1 Introduction.

¹⁰ *See, e.g.*, Anders Keitz, UPS’s Long-Tenured Board Members Are a Red Flag for Investors, TheStreet, Feb. 20, 2018, at 4 (noting that a number of institutional investors, including The Vanguard Group, BlackRock Fund Investors, and Wellington Management Co. LLP generally do not support setting director tenure limits), <https://www.thestreet.com/story/14491520/1/ups-s-long-tenured-directors-are-a-red-flag-for-investors.html>.

¹¹ Proposed Revisions to the UK Corporate Governance Code at 12.

¹² *Id.* at 12, ¶55.

¹³ § 7.3 Guidelines for Assessing Director Independence.

sufficient to “lead boards and shareholders to carefully consider each individual director’s contribution to the board, and their effectiveness, without the need for setting a maximum period of tenure.”¹⁴

Q9. Do you agree that the overall changes proposed in Section 3 of the revised Code will lead to more action to build diversity in the boardroom, in the executive pipeline and in the company as a whole?¹⁵

We generally agree that the overall changes proposed in Section 3 of the Proposed Revisions will lead to more action to build diversity in the boardroom. Our membership approved policy supports a diverse board.¹⁶ That policy states:

The Council believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.¹⁷

Consistent with our policy, we generally support the Proposed Revision’s Principal J’s aim “to broaden boards’ perceptions of diversity and to ensure appointment and succession planning practices . . . designed to promote diversity, not only of gender, but also of . . . ethnic backgrounds.”¹⁸ We also agree with the Proposed Revisions conclusion that “[c]ompanies that focus on increasing diversity in the boardroom, in their executive teams and across their workforces as a whole can expect a positive impact on their performance.”¹⁹

Q14. Do you agree with the wider remit for the remuneration committee and what are your views on the most effective way to discharge this new responsibility, and how might this operate in practice?²⁰

We generally agree with the wider remit for the remuneration committee. We note Provision 33 of the Proposed Revisions provides that the remuneration committee take on responsibility for oversight of company remuneration and wider workforce policies.²¹ That provision is not dissimilar from our membership approved policy on the role of the compensation committee.²² That policy includes the following language:

The committee should ensure that the structure of employee compensation throughout the company is fair, non-discriminatory and forward-looking, and that it motivates, recruits and retains a workforce capable of meeting the company's strategic objectives. To perform its

¹⁴ Proposed Revisions to the UK Corporate Governance Code at 12, ¶55.

¹⁵ *Id.* at 14.

¹⁶ § 2.8b Board Diversity.

¹⁷ *Id.*

¹⁸ Proposed Revisions to the UK Corporate Governance Code at 13, ¶65.

¹⁹ *Id.* at 12, ¶58; *see* Mike Fucci, Deloitte, 2017 Board Diversity Survey, Harv. L. Sch. F. on Corp. Governance & Fin. Reg. 3 (Dec. 19, 2017) (noting that more than 90% of respondents surveyed believe that greater board diversity will enable the organization to improve its overall business performance), <https://corpgov.law.harvard.edu/2017/12/19/2017-board-diversity-survey/>; *see also* Alina Tugend, Mellody Hobson Says the Time for Corporate Diversity is Now, DealBook/Business & Policy, N.Y. Times, Nov. 14, 2017, at 2, <https://www.nytimes.com/2017/11/14/business/dealbook/mellody-hobson-corporate-diversity.html>.

²⁰ Proposed Revisions to the UK Corporate Governance Code at 17.

²¹ *Id.* at 13, ¶65.

²² § 5.5 Role of Compensation Committee.

oversight duties, the committee should approve, comply with and fully disclose a charter detailing its responsibilities.²³

Thank you for considering our comments on the Proposed Revisions. If you have any questions, please contact me at 202.822.0800 or jeff@cii.org.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Mahoney". The signature is written in black ink and is positioned above the typed name.

Jeffrey P. Mahoney
General Counsel

²³ § 5.5c Oversight.