

CAD-02237

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From: Dr. Maurice Gillibrand

21st February, 1992

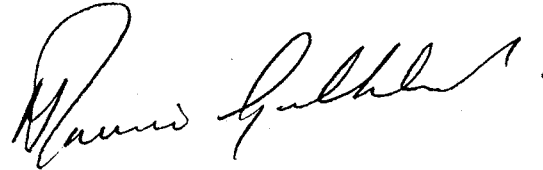
Mr. N. Pearce,
The Committee on the
Financial Aspects of Corporate Governance,
P.O.Box 433,
Moorgate Place,
London EC2P 2BJ

Dear Mr. Pearce,

In my letter to Sir Adrian Cadbury I undertook to make a submission for consideration by your committee early in 1992. This submission is enclosed herewith.

It may be that in addition to a written submission the committee may be seeking verbal amplification. In that event I would of course be willing to attend an appropriate meeting. Any information which you can let me have on the deliberations of the committee will be appreciated.

Yours sincerely,



* 19 Dec 91.

u Sir Adria

SUBMISSION TO THE COMMITTEE
ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

This submission is made within the context that there is an urgent need for reform of the system of corporate governance within the United Kingdom. There are many reasons why such reforms are necessary but dominant is the present perilous state of the British economy. Fundamental to this situation is the fact that British business is unable to compete with its counterparts in other countries, notably Germany and Japan.

A pre-requisite to any reform in corporate governance is an improvement in the quality of information provided to shareholders. It is understood that the terms of reference of the committee are limited to this aspect. Accordingly the following submission is made within this limitation.

Submission

1. The Communication Between Boards, Shareholders and Other Stakeholders

The defects in the communication between the board and shareholders are only too apparent at the present time. The extreme example is when a Board is faced with a potential takeover bid it becomes desperate to communicate with shareholders to ensure their loyalty. At the other extreme, shareholders asking questions at annual general meetings often receive a response which is arrogant and deprecating.

Particular mention should be made of the ICI annual general meeting which, as a result of many years careful development, creates an atmosphere in which shareholders are encouraged to participate. This has resulted in regular large attendances and a loyalty and commitment to the company of many shareholders.

The annual general meeting which is the statutory provision to enable shareholders to monitor the conduct of the business has been described by no less a person than an adviser to the Bank of England as a "non-event". It is submitted that

steps should be taken to re-establish the meeting in its proper role. For instance, it is suggested that it should become the practice or even the statutory requirement for the Secretary of the company to report on the proceedings of annual general meetings in the subsequent annual report. One consequence would be an immediate improvement in the accountability of boards to the shareholders in so far as issues once raised at an annual general meeting would become known to all shareholders.

Additionally it is submitted that steps are necessary to rectify the misuse of proxy voting. It is well known that institutions in the main cast their votes by proxy in support of existing management and almost invariably this is by proxy prior to the meeting. In many instances the Chairman will announce the results of the proxy votes prior to a resolution being considered by the meeting and thereby pre-empt any decision that the meeting might make. Indeed it might be out of order in announcing the votes in terms of number of shares without calling for a poll of shareholding.

Accordingly it is recommended that a list of proxy voters should be available to shareholders at the meeting in terms of one vote per shareholder. In the event of either a shareholder or the management wishing to overturn a decision of the meeting by calling for a poll this should necessitate a separate meeting. This would give all shareholders an opportunity to consider the basis of the decision of the original meeting before the poll was taken. Proper notice of a date for a poll meeting should this be necessary could be given in the annual report.

A disquieting report has been that companies are providing institutional shareholders with greater details of their activities and strategy with a view to improving shareholder support. This will have the effect of de-franchising the individual shareholders and it is an important principle that there should not be any differentiation in the availability of information among shareholders. It is submitted therefore that companies which wish to develop improved relationships with their shareholders should establish a shareholders consultative committee. This would be appointed by shareholders at the annual general meeting and consist of representatives, say two of each, of all classes of shareholders (i.e. employees, individual and

institutional.) This committee should be the recipient of all information on behalf of shareholders and be able to submit comment to the board for the benefit of the company. The committee would have a significant role in the event of a takeover bid in so far as they would be likely to carry the support of the majority of shareholders in any recommendation they might make.

2. Executive and Non-Executive Directors

It was pointed out in the previous section that the statutory annual general meeting which is the means by which the management of a company account for their stewardship to the owners of the business, namely the shareholders, has become largely ineffective. The lack of such monitoring provision in the United Kingdom has resulted in the general under-performance of British industry which has caused the erosion of our manufacturing capability and which is now having such a adverse effect on the economy. A further consequence has been the business scandals such as Guinness, Blue Arrow and, more recently, Maxwell which are bringing business and the City into such disrepute among the citizens in this country. Indeed, it is suggested that the consequent demand for greater regulation of business is a result of the inadequate provision of monitoring within the corporate structure.

One proposal to provide improved monitoring of the executive within a structure of corporate governance has been to adapt the present system by the appointment of more non-executive directors with special responsibilities to shareholders. Such a proposal is defective in so far as there is no provision for such powers within the Companies Act and, indeed, would adversely affect the performance of the company by developing the schism of divided responsibilities within the board of directors. Additionally, the presence of non-executive directors has not restrained the activities of the companies which are, or have been, subject to legal proceedings.

An alternative is for the committee as recommended in the previous section to be consulted on all matters which are subject to approval by shareholders at a general meeting. This would include appointment and remuneration of directors, disposal of

assets, etc. and would provide a check on excessive executive authority necessary to protect shareholder's interests.

Nevertheless, non-executive directors have an important role to play in the company and in particular they bring external expertise and experience to bear on board decisions. At the same time it must be emphasised that the concept that in some way non-executive directors carry less responsibility for the conduct of the business is misleading and unlawful.

3. The Frequency, Clarity and Nature of Corporate Reporting

In general the frequency of annual reports supported by shorter half-yearly reports is satisfactory. However, the quality of the reports often leaves a lot to be desired.

Effective reporting is an essential tool in the effective management of any large organisation. Standards of reporting are well established and include clarity of information, presentation of reliable data in a form which can be readily comprehended and the ultimate need to be of service to the reader.

Such standards are practised widely within many organisations and yet do not apply to the annual report. These reports are often expensively produced and are ambiguous in the extreme. Extensive coverage is given of generalised information and at the same time other information is deliberately camouflaged. For instance, the information on directors' remuneration is given in an archaic and unnecessarily uninformative form and details of directors' contracts of employment are only available to a shareholder who makes the effort to request this information prior to the annual general meeting. In fact, directors' contracts often involve a future substantial liability for shareholders and the present lack of disclosure is unacceptable.

It is submitted that your recommendations should include steps to improve clarity of information and reduce the generalised information which on occasions is often repeated in the same report. In particular, the remuneration of individual directors should be stated unambiguously and future contractual liabilities clearly identified.

4. Conclusion

In dealing with the above specific items of corporate governance the submission includes proposals for increasing the effectiveness of the annual general meeting. In particular the appointment by the meeting of a shareholders consultative committee is recommended. Such a committee would form a bridge over the schism which currently exists between management and shareholders. It would provide effective support for good management which is essential for long-term strategies and thereby replace the "short-termism" which prevails at the present time. The committee would play a significant role in the event of a takeover bid.

M.I.G.

For further information :

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