

PRESS CONFERENCE TUESDAY 1 DECEMBER 1992Briefing NotesCode lacks teeth

- Stock Exchange is to require disclosure.
- Auditors are to be involved in checking compliance statements.
- Compliance is essentially for shareholders. Compliance statements provide an agenda for representations. 'Market regulation.'
- Committee will stay in existence to act as source of authority on the Code. Review will be undertaken by a successor Committee in 1995.

Role of auditors has been watered down

- Role of auditors has been retained. Have simply made clear that their role is to review the compliance statements in so far as they relate to items in the Code which can be objectively verified. Unreasonable to expect auditors to judge, say, the weight carried by NEDs in boardroom discussions and decisions, when auditors do not routinely attend board meetings.

Regulatory panel should be set up to enforce the Code

- Compliance is a matter for shareholders, taking into account the circumstances of the individual company. Do not see what the locus of a panel would be, and how it could operate with the necessary flexibility. A panel would generate bureaucracy and would stifle the evolution of good corporate governance practice. Therefore prefer to give our proposals a chance first.

**Nothing has been done to tighten up the proposals on directors' remuneration**

- Wording of the Code has been tightened up so that now gives a very clear statement of principle on disclosure.
  
- If Committee were to go beyond this, there are two possible routes:
  - a) laying down more rigorous disclosure requirements - eg lengthening the list of directors whose remuneration is individually identified, or requiring the disclosure of the potential value of stock option schemes under alternative scenarios of the company's future performance;
  
  - b) enhancing the role which shareholders could play, either by making particular aspects of directors' remuneration subject to shareholders' approval, or by making it easier for shareholders to table advisory resolutions on pay matters. Both would require reform of the Companies Act.

The Committee will continue to monitor these issues, including developments in the US. We expect them to be on the agenda of our successor body.

**Delay in introducing compliance statements (not required until reports covering periods ending after 30 June 1993) is another concession?**

- Companies in fact have no time to lose if their first compliance statement is to be positive. We have simply allowed companies a short period to implement any items of the Code with which they do not at present comply before requiring them to report publicly. There is nothing however to stop companies from making statements in advance of the due date and we would encourage this, particularly in the case of companies with a year-end after 31 March.

- The later date will provide time for the preparation of guidance for companies and auditors on reporting on internal control and going concern (important features of the Code), and also guidance for auditors on their role in reviewing companies statement of compliance. It is important that the guidance should be aired publicly before it is finalised and the later date will allow this.

**What guidance notes remain outstanding and when will they be produced?**

a) guidance for auditors on their review of the statement of compliance: the Auditing Practices Board will develop preliminary guidance by the middle of 1993.

b) guidance for directors and auditors on reporting on going concern: a joint working group of the ICAEW and the 100 Group, in consultation with other bodies with a major interest, is developing guidance for directors. It will be issued for public comment early in 1993 and the aim will be to finalise it by the end of June 1993. The APB is at an advanced stage of developing a standard for auditors on going concern which is likely to be issued before this date.

c) guidance for directors and auditors on reporting on internal audit: another joint working group of the ICAEW and the 100 Group, in consultation with other bodies with a major interest, is developing guidance for directors. The work is proceeding slightly behind that on going concern, but draft guidance will be issued for public comment in the new year and the aim will be to finalise it by the end of the summer. The APB hope to produce an exposure draft of a proposed auditing standard, or guidance in some other form, by the same time.

**How many people replied to the request for views on the draft report and what proportion were in favour of the proposals?**

- 225 respondents are listed in the back of the report. Many offered a comment on whether they were generally supportive of the report as a whole - those who said that they were supportive outnumbered those who said they were not by about six to one. This tallies with the general feedback I have received from conferences and other speaking engagements.
- This is not to claim that those who were generally supportive of the draft did not have specific criticisms. We have tried to meet many of them in the final report.

**What were the main criticisms?**

- Too much emphasis on control, not enough on the essentials of succeeding in a competitive market place - "Long on accountability, short on drive and efficiency" (Owen Green).

(Met by underlining purpose for which Committee set up, and recognising the need for drive and efficiency - paras 1.1, 1.2, and 2.5 - 2.8).

- Proposals on NEDs, taken as a whole, will undermine the unitary nature of the board (CBI and many companies).

(Met by changes outlined on page 3 of press notice)

- Compliance statement will be unnecessary and bureaucratic (CBI), or inadequate (institutions and, at the extreme, Ernst & Young who call for an SEC).

(Dealt with in para 1.10)

- Code will be burdensome for small companies (small companies, and the accountants).

(Position of small companies acknowledged at 3.15 - boards of small companies urged to get the benefits from implementing the proposals)

- Proposals are a whitewash for auditors (companies).

(Proposals are designed to extend the scope of the audit to meet changing needs and expectations but they will also increase the scope for litigation against auditors - an issue of considerable concern to the profession - 5.15, 5.33.)

- Proposals fail the Maxwell Test.

(Requirement to report on going concern and internal control, and involvement of auditors in these areas and other parts of the compliance statement, will make life more difficult for Maxwells. See 1.9.)

- Proposals are unconvincing on role of shareholders.

(Chapter on shareholders strengthened at 6.4, 6.5, 6.6, 6.12, and 6.16)

- Report does not adequately recognise the important role of the company secretary, and the internal auditor (the Institutes of Chartered Secretaries, and Internal Auditors)

(Dealt with at 4.25 - 4.27, 4.39, and Code 1.6)

- report is unclear on the definition of NEDs' independence

(Tidied up at 4.12 and Code 2.2)

- report deals inadequately with directors' remuneration (the press)

(See separate briefing note)

1.4 states 'a programme of research will be undertaken to assist the future monitoring of the Code'. What does this mean?

The Committee will ensure that information is collected about the number of companies who comply with the proposals, so that there is an adequate data base for the Committee's successor body when it reviews progress in 1995. The Committee's continued existence, until the successor body takes over, will help to make sure that this happens.

In addition, the ICAEW Research Board intends to fund a programme of research into corporate governance matters, with emphasis on compliance with the Cadbury proposals. A steering committee including representatives of the Committee's sponsors will be set up shortly and will invite applications for projects to be completed by early 1995.

The Committee would welcome it if other bodies were similarly to make research funds available.