cc Sir Adrian
CAD - 02157

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Nigel Peace Esq.,
Secretary
Committee on the Financial
Aspects of Corporate Governance
P. O. Box 433
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Dear Mr. Peace,

I am writing some comments on the draft report in a personal capacity. I am Chairman Designate of Scottish Power plc, a Vice Chairman of Hill Samuel Bank and have spent nearly all my working life as a Main Board Director of major UK quoted companies in a variety of capacities from Finance Director through Chief Executive to Chairman.

Pertinently perhaps, I was, until six months ago, the Chief Executive of Berisford International plc, for 18 months undertaking its refinancing, restructuring and reconstitution. I can therefore claim to have a singular point of view.

My comments on the report and the substance underlying it are as follows:

1. I feel that the report underplays the existing already satisfactory nature of most of the operation of Corporate Governance within the United Kingdom. I also feel that there is far too much emphasis on expectations to be placed on non executive directors to "enforce" Corporate Governance rather than to play a key and constructive role in the interests of shareholders and customers, clients and consumers and the corporate organisation which they represent. It is true that

the report makes passing references to this theme but then its whole emphasis in recommendations and detail outweighs such commentary as there is in this area.

2. The report places upon the whole Board, and in particular upon the Chairman and non executive directors, duties which substantially already exist in a well run company. The emphasis, however, is on much more intense scrutiny of the Governance activity. There is little practical possibility, in my view, that this additional emphasis can be honoured in substance, as opposed to form, with the amount of time which directors in general and non executive directors in particular can and should devote to Corporate Governance areas. The non executive director in particular would have to spend a great deal more time than he traditionally does, understanding certain aspects of the operations of the company, its internal control efficacies and the work done by the company's professional advisers to usefully add value to the present situation. The report does not really suggest how this additional resource is to be achieved and it does not recognise the great difficulty that most corporate organisations have in securing non executive directors of calibre. To enhance the requirement for quality in non-executives by an additional loading of time commitment will only exacerbate the situation. However, my own view is that there should be at least a recognition in practice that bare attendance at monthly Board meetings will be insufficient for a non executive director to adequately discharge his duties. A further factor will be the need to greatly enhance the rewards with perhaps £50,000 being the norm rather than £15,000.

3. It is suggested in the report that directors should undertake statements on the adequacy of their internal control systems and the appropriateness of the companies' going concern statements. In my experience there is really no sensible way that a non executive director, far less the majority of executive directors, can undertake such a review. They are wholly dependent on the financial management stream within companies and the auditors in order to undertake such a duty. To discharge the responsibility properly would take a great deal of time even if the skill was available. Apart from a matter of emphasis therefore, the recommendations in the report will achieve little in practice other than perhaps deterring people who can be positive contributors to a business from taking up the role of director - or indeed it may result in the wrong type of director taking up appointments.

4. The tenor of the report is to place I think, expressly or by implication, further reliance upon the work of auditors. Progressively over recent years the role of the auditor as guardian of shareholders' interests and to a certain extent advisers to the Board, has, in my view, been steadily downgraded. Pressure on fees and the emergence of more appropriate streams of advice from other sources have lessened their significance until things go wrong. The profession itself is not organised particularly well to handle the new challenges which have arisen over the last few years and are further outlined in the report. However, having said this, I am convinced that the only likely source of a more consistent and higher standard of imposition of Corporate Governance will come from requiring auditors to carry out greater process and activity which will oblige directors to become more thoroughly involved and be more aware of the condition of their company.

It is after all likely to be only the auditor who will have sufficient additional capacity to undertake the extra work in a format necessary to reassure directors that the internal control systems in a company are adequate. At present this is taken largely as read but in order to give assurance to the shareholder I suspect directors would require to see an annual detailed report from auditors on the adequacy of the systems in operation in the business. This report would require to be based not just on a technical review but an overall appraisal by the auditor which would be a test of skill.

5. There is one particular aspect of the report which I totally support. This is the focus on the statement of Working Capital Adequacy. I believe that if the requirements for such a Statement were to be included in both interim and full year accounts and developed for a considerable period of time ahead, with the assumptions involved clearly stated, a considerable amount of risk might be removed for the shareholder. The Boards of Directors would be required to think through their future in a much more applied way. I suspect that this part of the recommendations in the report should be significantly expanded to require the accounting profession to devise a statement which can be included in published half year and full year accounts, setting out for a period of say not less than 18 months from the period end date, the condition of the Company's working capital resources.

6. Part of my scepticism on the report overall is based upon my own experiences with Berisford. There was little to criticise in the detailed accounting and control systems which existed in Berisford at the time of its failure. It probably would have been possible, given the considerable financial skills of the financial management, to

construct a Statement of Working Capital Adequacy. The real failure lay in the ability of the executive directors to take large unreviewed decisions which were imprudent. There is nothing in the report which really enhances the ability of the Board to avoid this. The only approach which I can see that would enhance the quality of decisions in this area is the generation of some form of acknowledged best practice on the process of taking and recognising major Board decisions. This would not be popular amongst directors and would be decried as an affront to their present skills.

The shareholder probably requires to know that the operation of management and Board process in the company falls within certain guidelines and that these guidelines continue to be operated. The only effective way in which this can be seen to happen is for the non executive members of the Board to be relatively numerous in relation to the Board's total complement, for them to have been of calibre when selected and for them to have been involved in depth for a considerable period of time in the decision making process. This implies the recognition that the role of the non executive director should be expanded both in terms of authority and duration of time. This, as I said before, exacerbates the already existing pressures on availability of non executives. The overall ~~the~~ UK corporate scene is under populated with non-executive competence in my view. I feel too that the focus of the responsibility of the non executive in relation to the major decisions of the corporates would be a stronger measure of defence of the shareholder's interest than application of their time in the more negative aspects of ensuring that the systems of control restraint were in operation. The latter I believe can be achieved more successfully and consistently by extending the role of the auditor.

7. Overall while I believe that the Cadbury draft report is a useful reprise of good Boardroom practice it will do little to deter the elements of bad practice which have featured recently in several large and spectacular corporate failures, in the future. However tight the security a determined maverick will nearly always break it. My own view is that this can only be achieved by enhancing the role and the duty of the Board (particularly in relation to Working Capital Adequacy Statements) and inculcating in the minds of Board, non executive directors and the shareholding public the establishment of a duty upon non executive directors to involve themselves in thoroughly understanding the major decision taking activities of the entity for which they are responsible.

I am afraid that I regard many of the suggestions of the draft report as essentially negative use of directors' time. There is in my view a need for directors to spend more time on Board and strategy decisions and less on the relatively trivial aspects of Boardroom formalities where greater security for the shareholder can be found in consistent application of work in depth by the auditor.

Yours sincerely,

C. M. Stuart.

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