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15 September 1992

Nigel Peace
Secretary
Committee on the Financial Aspects of Corporate Governance
PO Box 433
Moorgate Place
LONDON EC2P 2BJ

Dear Nigel Peace,

I enclose a note setting out some comments on the Committee's Draft report, with apologies for its being so late. I hope it is not too late to be considered.

Yours faithfully,

Roger Morton

Committee on the Financial Aspects of Corporate Governance

Comments on Draft Report

by Roger Morton, MA IPFA AIIMR

1 Background

1.1 My experience of the issues dealt with in the report has been gained as an investment manager for 13 years of a large pension fund, a director for 5 years of what became a listed investment company, an adviser for the last 8 years to pension funds and charities on investment strategy and management and for 24 years a trustee of the Joseph Rowntree Charitable Trust. (The last is relevant because of the Trust's close relationship until 1988 with Rowntree Mackintosh.)

1.2 There are four matters on which I should like particularly to comment and in view of the lateness of this submission will do so only very briefly.

2 Institutional shareholders (paras 6.6-8)

2.1 A distinction needs to be drawn between communicating with the managers of institutional funds and with their proprietors. Companies frequently fail to do the latter. For instance it needs a conscious effort for shareholders whose shares are held in the nominee names of managers or banks to ensure that they receive copies of annual reports. Where managers are given discretion as to how they should vote a client's shares, that discretion may be withdrawn at times of controversy, e.g. during takeover bids, and failure by a company to communicate effectively with the underlying shareholders in the meantime may operate to its disadvantage for reasons which more effective continuing communication could have averted.

2.2 I suggest that section 6 of the report should be redrafted to make the appropriate distinction

3 Voting (para. 6.8)

3.1 There seems to be an assumption in many quarters that exercising votes as shareholders, however whimsically, is somehow an effective way of ensuring directors' accountability. The issue becomes critical at a point where shareholders might want to vote against a board resolution. That seems to me to be a point which should only be reached at the end of a period of discussion and negotiation which has been unsuccessful. Whether a shareholder feels it right in the interests of either pursuing his own cause or the well-being of the company to vote against the board, however frustrated he may feel, is a weightier issue than the draft report seems to recognise.

3.2 The most dramatic illustration of this problem in which I have been involved was a listed company in which the fund I managed had a holding of several percent of the issued capital. The Chairman/Chief Executive had failed the company in a serious way but was refusing to take responsibility. Attempts to secure his resignation were resisted but the sanction of voting against his re-election to the board would almost certainly have invited a bid from a company who would have broken up the company in a way which would not have been welcome to any party. It would also have attracted public attention to the position of the shareholder which it would have found it very difficult to handle, for reasons which are difficult to justify but very understandable in human terms.

3.3 I suggest that some commentary should be added to para 6.8.

4 Price-sensitive information (paras 6.9-10)

4.1 I very much welcome what is said here, which dispels the very widespread confusion that simply imparting price-sensitive information to shareholders selectively is an offence.

5 Communication during takeover bids

5.1 I realise that it is difficult for the Committee to address the special circumstances of takeover bids, but I hope that the position of defending boards communicating with shareholders might be strengthened. The investment company of which I was a director received a hostile bid which was eventually successful at a level which the board felt to be very much too low, which was vindicated by the company being sold on at a substantially higher price shortly afterwards. The effect of the bid was to bring down the shutters on communication with our shareholders, who were almost entirely institutions, and in particular to prevent our publishing any opinion of the realisable value of the considerable portfolio of unlisted securities. It was argued at the time that this would represent an unverifiable opinion and could not therefore be permitted. It was however the most authoritative opinion which could have been offered to shareholders.

5.2 I suggest that as long as a distinction is made between fact and judgement, judgements which are relevant to the issues before shareholders should be available to them and that a new paragraph after 6.11 should deal with this.

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