Catherine Woods
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5th December, 2013

Dear Ms Woods,

Investor Relations Society response to the Directors' Remuneration Consultation

Thank you for giving us the opportunity to take part in the above consultation. I am pleased to enclose The Investor Relations Society's response.

The Investor Relations Society's mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community. The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective two way communication with the markets and to create a level playing field for all investors. It has over 670 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

Following an annual survey of our members earlier this year, the majority of respondents felt that investor engagement was improving at all management levels. Furthermore we have found that remuneration continues to be a significant part of the conversation between IR teams and their investors; 59% of respondents indicated remuneration was one of the main topics of discussion in meetings.

We address all three areas from your proposals in our submission below, and our key points from our response can be summarised as follows:

- In principle, we think extending clawback provisions across larger companies and sectors is not practical nor desirable
- Deterring the appointment of executives to more than one committee could inhibit the talent of NEDs, reduce the spread of expertise and impact those smaller companies with smaller boards
- Setting criteria for companies to report when they fail to gain a majority in support of a resolution on remuneration is unhelpful and unnecessary

1. Extended clawback provisions

The Society deems it impractical for all companies to have a clawback mechanism in place, and at this stage we believe this should not extend past the financial services sector. Arguably it appears that larger companies are already in effect adopting a clawback mechanism as best practice, thereby demonstrating their willingness to follow guidance and remuneration policies correctly without burdensome and costly regulation changes.

i) Is the current Code requirement sufficient, or should the Code include a "comply or explain" presumption that companies have provisions to recover and/or withhold variable pay?

We believe the current Code is sufficient and does not need to include a "comply or explain" presumption. We support the idea that it is beneficial for companies to demonstrate the clawback provisions they are making and we expect clawbacks to become best practice but we do not think the Code needs to be revised to reflect this.

ii) Should the Code adopt the terminology used in the Regulations and refer to "recovery of sums paid" and "withholding of sums to be paid"?

If there were to be changes, we support the adoption by the Code of the terminology used in the Regulations. This will enable a consistent approach to clawback provisions.

iii) Should the Code specify the circumstances under which payments could be recovered and/or withheld? If so, what should these be?

We don't believe the Code should specify the circumstances under which payments could be recovered and/or withheld. In practice it would be too complex, and it will also vary depending on company size and sector. It should therefore be left to the discretion of the company to specify the circumstances.

iv) Are there practical and/or legal considerations that would restrict the ability of companies to apply clawback arrangements in some circumstances?

We consider there to be both practical and legal considerations that would restrict the ability of companies to apply clawback arrangements. For employees under older contracts, there will be practical implications and costs in changing contracts to apply clawback arrangements, and there may well be legal practicalities if an employee leaves a company.

2. Remuneration Committee Membership

i) Are changes to the Code required to deter the appointment of executive directors to the remuneration committees of other listed companies?

We strongly disagree that the appointment of executive directors to the remuneration committees of other listed companies should be deterred. In our opinion if an executive director has remuneration experience, then they should be encouraged to be on one or more remuneration committees, thus gaining a breadth of experience, and sharing their knowledge and best practices across industries and boards.

In reviewing the figures in the consultation document under points 12 and 13, these figures demonstrate conclusively that there is no detrimental impact where executive directors act as non-executive directors on the boards of other listed companies.

By implementing a change to the code, this could deter the talent of NEDs and limit the pool of potential executive directors that could be appointed. In particular this may affect the smaller-cap companies where boards are typically smaller.

Votes against the Remuneration Resolutions

i) Is an explicit requirement in the Code to report to the market in circumstances where a company fails to obtain at least a substantial majority in support of a resolution on remuneration needed in addition to what is already set out in the Regulations, the guidance and the Code?

We do not feel there should be a requirement in the Code to report where a company fails to obtain at least a substantial majority in support of a resolution on remuneration.

While we are clear in our response, we would like to make some further comments to support our argument against your additional points below:

If yes, should the Code:

- **set criteria for determining what constitutes a 'significant percentage';**
- **specify a time period within which companies should report on discussions with shareholders; and/or**
- **specify the means by which companies should report to the market and, if so, by what method?**

It would be misleading to determine the exact figure of what constitutes a 'significant percentage' as company shareholder bases are becoming increasingly diffused and depending on the size and sector of a company, the shareholder make up may differ significantly.

Furthermore, we feel it would be unreasonable to put pressure on a company to report back to the market on shareholder discussions within a certain timeframe. If a company fails to gain a substantial majority in support of a remuneration resolution, then there is already significant pressure on a company from a reputational standpoint to start/continue discussions with shareholders and communicate this to the market.

Indeed, most companies observing good investor relations practices should be aware of any major shareholder dissent and already been engaged in communications with shareholders. Those who don't communicate with the market on this issue will experience a valuation impact so it is in a company's interest to follow best practice. Therefore we do not believe strict guidelines on when and how companies should report to the market should be enforced. In the event of a 'surprise' vote against, it may however take time to assemble the remuneration committee, as well as open discussions with the shareholder, and therefore specifying a definitive timeframe would only create inflexibility to the process.

The nature of remuneration policies will tend to militate against disclosure of the type envisaged here except in the most egregious cases. Investors, rightly, do not all think alike, and may have different views about different aspects of remuneration policy. For example, one investor may vote against a policy because it contains an LTIP; while another may approve of LTIPs, but vote against because too much reliance is placed on Total Shareholder Return; and another again may vote against because too little reliance is placed on Total Shareholder Return.

In the event that it is decided to introduce a requirement to this effect, it is our strong view that companies should not be obliged to undertake further enquiry into the matter, but should simply report the views of those shareholders who have complied with the Stewardship Code and indicated their reasons for not supporting management.

ii) Are there any practical difficulties for companies in identifying and/or engaging with shareholders that voted against the remuneration resolution/s?

With votes against the remuneration resolution, the company will be working hard to maintain an open dialogue with their shareholders, in line with best practice investor relations. As previously mentioned, it is therefore an impractical and time consuming process to convene all members of the remuneration committee, particularly within a definitive timeframe.

It is also worth noting that we have concerns about the growing influence of the proxy advisor industry which has extended significantly in recent years. Proxy advisors are third party organisations recommending to shareholders which way they should vote and we are not confident that they will always engage on issues around remuneration. We consider that on certain sensitive areas these advisors are not always fully versed with the nuances of company policy issues, and that more engagement is required especially in light of the recent binding vote on remuneration. We believe shareholders should be accountable for their voting procedure, these should not be contracted out and that any potential vote against a remuneration policy should be discussed with the board well ahead of a vote.

Other Possible Changes

i) Is the Code compatible with the Regulations? Are there any overlapping provisions in the Code that are now redundant and could be removed?

We feel it is appropriate to leave those overlapping provisions in both the Code and the Regulations.

We hope you find these comments useful and please do not hesitate to contact me if you have any further questions.

Kind regards

Emma Burdett
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