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By e-mail: policy@issgovernance.com

9 November 2015

Dear Sirs

Response to 2016 Benchmark Policy Consultation: UK & Ireland: Director over-boarding policy

I am writing on behalf of GC100 to respond to your draft UK and Ireland policy on Director over-boarding. GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. 80 of the FTSE 100 companies are currently represented in GC100 with over 125 individual company secretary and general counsel members. Please note, as a matter of formality, that the views expressed in this letter do not necessarily reflect those of each and every individual member of the GC100 or their employing companies. We very much welcome the opportunity to comment on your draft policy.

We do not agree that setting a recommended maximum limit on the number of board roles a director can hold is a useful enhancement to your guidelines. As noted in your consultation document, the UK Corporate Governance Code ('Code') does not include a limit. Instead, the Code's approach is, appropriately, focused on having sufficient time to devote to the role of chairman or non-executive director. We support the Code's underpinning principle which is that not all directorships require the same time commitment. We therefore suggest that specifying a maximum number of directorships would not be sensible. As well as not catering for the different circumstances of individuals and individual companies, setting a limit also creates a risk that, increasingly, guidelines such as this will simply become checklists against which companies are measured, resulting in qualitative explanatory statements in the Annual Report or AGM-related documentation being largely ignored. That would also be inconsistent with the Code's *comply or explain* approach.

Further directors cannot just resign from their directorship positions to be in line with prescriptive guidelines. Typically they will transition in and out of directorships to meet the needs of the boards of the companies on which they sit. It would be quite unfair for them to attract criticism and the risk of an AGM vote against because they were supporting board needs or succession plans. This is another example of why the *comply and explain* principle works so well. Also, this policy may make it more difficult for women to become chairmen as many of the more established female directors currently hold a number of directorships which they may be unable to relinquish

at short notice.

We encourage all investors who have concerns about the number of board positions held by a particular director to be addressed through active engagement with the individual concerned. In our experience, there are certain very experienced and highly effective directors who are able to participate in multiple boards and indeed add greater value on our boards because of their diversity of experience. If investors are concerned about over-boarding, the table of board attendance in the Annual Report could help highlight where conversations with individuals might be warranted.

In the event that ISS decides to proceed with limits, we would suggest that you clarify whether a “publicly-listed company” means listed in the UK or elsewhere. We would also urge a reconsideration of the chairman limit. As drafted, the final part of the chairman section (“The chairman may, however, hold up to three other non-executive directorships”) implies that the chairman role has the weight of two non-executive roles, given the non-executive director limit of five roles that stems from the third point in the proposed policy. That is:

$(1 \text{ chairman} + 3 \text{ NED}) = (5 \text{ NED})$, which implies that $(1 \text{ chairman}) = (2 \text{ NED})$

We have no concern with that 2:1 ratio, but there seems to be an inconsistency in the first part of the chairman section: “A board chairman is not expected to hold an executive position elsewhere, *or more than one other chairmanship position.*” Logically, the italicised words should allow for one other chairmanship *and* one other non-executive role to be equivalent to the limit of five non-executive directorships. That is:

$(1 \text{ chairman} + 1 \text{ other chairman} + 1 \text{ NED}) = (5 \text{ NED})$

We would be happy to discuss this in greater detail with you.

Yours faithfully,



Mary Mullally
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