



Quoted Companies Alliance

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The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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Friday 5 July 2019

To whom it may concern,

Review of the Effectiveness of Independent Board Evaluation in the UK Listed Sector

We welcome the opportunity to respond to this consultation to review the effectiveness of independent board evaluation in the UK listed sector.

The Quoted Companies Alliance *Corporate Governance Expert Group* has examined the proposals and advised on this response from the viewpoint of small and mid-size quoted companies. A list of Expert Group members can be found in Appendix A.

Overall, we welcome your work to review the effectiveness of independent board evaluations in the UK listed sector. In order to help drive improved performance and stimulate growth, not only for a company, but for the UK economy as a whole, it is imperative that the standard and processes of these independent board evaluations are of a high quality. An effective independent board evaluation can significantly improve the performance of a board, its individual members and the company by identifying areas of weakness that can be addressed and improved.

The small and mid-size quoted companies that we represent are keen to obtain constructive feedback on their performance and effectiveness, and welcome some of the measures you suggest to improve this, such as the good practice principles, inasmuch as they are voluntary. However, for the reasons outlined below, we are circumspect to the introduction of a code of practice for reviewers and additional disclosure guidance for companies that will transpire universally for all companies.

We are of the opinion that if the disclosure guidance is introduced, it should apply to FTSE 350 companies only. The application of the disclosure guidance needs to have clearly defined boundaries. The target audience for this measure should be FTSE 350 companies only, and consideration needs to be given, and measures introduced, in order to ensure that there is no trickle-down effect, whereby smaller companies feel they are compelled to comply with the new measures when they do not have the capacity to do so.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'TW', with a horizontal line extending to the right.

Tim Ward
Chief Executive

The purpose of board evaluation

Q1 Do you agree that the purpose of independent board evaluation is to help boards improve their performance and to demonstrate that they are committed to doing so? If not, what do you consider the purpose should be?

Yes – we agree with the purpose of independent board evaluation as set out in paragraph 21. In particular, we agree with the second point that the board needs to demonstrate to its shareholders that it “is addressing any areas of weakness in its effectiveness”. It is especially important that the onus should be on enhancing board effectiveness. The focus should be on identifying areas for improvement rather than just highlighting things that have gone wrong. This is important not only to enhance the effectiveness and efficiency of the board as a whole, but also to develop individual board members to enable them to do better and add further value, as opposed to simply highlighting their wrongdoings. Doing so will help drive improved performance and stimulate growth.

Overview of suggested actions

Q2 Will the changes made to the UK Corporate Governance Code in 2018 be sufficient on their own to improve the standard of board evaluation and reporting by listed companies, or would additional actions be helpful?

Yes – we believe that the changes made to the UK Corporate Governance Code in 2018 are sufficient to help improve the standard of board evaluation and reporting by listed companies. Any additional requirements or regulation, apart from the voluntary good practice principles, even in the form of guidance, or a code of practice, should be avoided as the current FRC guidance is sufficient.

If additional actions are taken to increase requirements or regulation, this could have consequences for independent board evaluations taking place. For instance, increasing the regulatory compliance burden could impact the willingness of an individual to put themselves forward as an evaluator. Experienced directors, who have considerable knowledge and a wealth of experience in interacting with a variety of boards, could be deterred from acting as the external facilitator for a review due to the increased compliance burden. Furthermore, additional regulation could lead to a standardisation in approach to evaluation, meaning that evaluations could be conducted in a way that is inappropriate to the company being evaluated.

Q3 If further action is desirable, do you support the proposed package of a code for board reviewers and principles and disclosure guidance for listed companies? If so, should they be mandatory or voluntary? Are there any parts of the package you consider to be unnecessary or inappropriate?

We do not support a code of practice for board reviewers. However, we do support the introduction of good practice principles for companies, but only on a voluntary basis.

In terms of disclosure guidance, both the UK Corporate Governance Code and the QCA Corporate Governance Code cover what should be reported and disclosed on the board evaluation in the annual report. As such, further guidance will not be necessary. If introduced, we believe the disclosure guidance as set out in Appendix E, should only apply to FTSE 350 companies, as the one-size-fits-all approach it adopts is not sufficiently proportionate to smaller companies.

Q4 Are there other actions that should be taken to improve independent board evaluation in the listed sector as well as or instead of these suggested measures? If so, please specify.

See response to Q2.

Q5 Should shareholders have more direct influence on the appointment of the independent board evaluator? If so, what form should this take?

No – we do not believe that shareholders should have more direct influence on the appointment of the independent board evaluator. Of course, taking into consideration the viewpoints of shareholders is important, but we believe that the emphasis should be on how the board communicates with its shareholders. Rather than shareholders influencing the appointment of the independent board evaluator, the board should provide a description of the board performance evaluation process. This should include a justification of the choice of evaluator, the robustness of the appointment process and an explanation about the frequency of board evaluations, as well as the criteria against which board effectiveness is considered.

Q6 Should the code and principles be applied to other sectors as well?

We have no comments.

Actions for service providers

Q7 Do you agree with the proposed definition of ‘independent board evaluation’?

Yes – we agree with the proposed definition of ‘independent board evaluation’.

Q8 Do you agree that a disclosure approach to understanding a signatory’s competence and capacity is appropriate? Should the code identify specific processes that must form part of evaluations carried out by signatories?

Whilst we are opposed to the formation of a code of practice, we do believe that an evaluator should disclose how their level of competence and capacity is appropriate for undertaking a board evaluation. For small and mid-size quoted companies, the evaluator should be able to demonstrate that they have experience of working on, or with, the boards of successful small or mid-size quoted companies, or, at a minimum, have experience of interacting with a variety of these boards that they can then benchmark as good practice.

Moreover, despite our concerns raised about a code of practice, if one is published, it should not identify specific processes that must form part of evaluations. Doing so runs the risk that evaluations could become more of a compliance or ‘tick-box’ exercise due to the impersonal and generic nature of having a set of specific processes to follow. Not only does this limit innovative approaches to evaluation, but it also does not encapsulate the diverse and unique nature of companies, particularly within the community of companies outside of the FTSE 350. Each individual board should have individually tailored personal and team objectives defined and agreed upon at the start of the financial year, which take into account the unique purpose and vision of the company and are aligned to its strategy and business model. As such, an evaluation conducted that uses pre-defined processes may not cover all aspects of how an individual board functions and whether it is being effective in certain areas. The evaluation should instead be made against the objectives set out at the beginning of the year.

Q9 Should the code set out minimum standards in relation to the independence and integrity of the reviewer? If so, are the suggested standards the right ones?

If a code is published, we do believe that there should be minimum standards in relation to the independence of the reviewer and, on the whole, agree with the proposed standards. That said, we do not believe that the minimum standards should apply to a reviewer for companies outside of the FTSE 350.

Additionally, we do not believe that a reviewer should be able to undertake three consecutive board evaluations for the same client, as proposed. Rather, we believe that the same reviewer should not be used more than twice. Whilst we note that having the same reviewer can be beneficial for establishing whether progress has been achieved in terms of improving the board's effectiveness, there are limitations to what the same reviewer can uncover. A reviewer's ability to unearth new opportunities for improvement is restricted when evaluating the same company, relative to that of a completely new reviewer. As such, we propose that a reviewer undertakes no more than two consecutive evaluations of the same board in order to ensure that a company's board has been evaluated rigorously and any impediments to its effectiveness can be uncovered and resolved.

Q10 Do the code of practice and the principles for listed companies deal adequately with potential conflicts of interest?

Yes – we believe that the code of practice and the principles for listed companies deals adequately with potential conflicts of interest in stating that a reviewer should not provide any other services to a client either simultaneously or retrospectively. It is fundamentally important that the reviewer is able to exercise independent judgement and provide a review free from undue influence and bias, and whilst it is difficult to eliminate conflicts of interest in their entirety, the potential conflicts of interest outlined in this consultation mean that they can be mitigated.

Q11 Are there any other issues that should be addressed in the code?

We have no comments.

Q12 Is there a need for oversight and/or accreditation, or should service providers be able to self-certify that they are meeting the standards set out in the code of practice?

Notwithstanding the merits that some form of oversight and/or accreditation would entail, we believe that such an approach could be counterproductive in improving the effectiveness of independent board evaluations. For the reasons set out below, we do not believe that such arrangements are necessary or required.

Firstly, the cost of there being an oversight or accreditation function could be significant, and, if borne by the signatories, would potentially deter competent reviewers from seeking accreditation. This would have negative implications for both the quality and quantity of reviewer available. That is, the overall quality of reviewers will be reduced as highly competent reviewers may not wish to incur the costs, as well as the cost acting as a barrier to entry, lowering the amount of reviewers and limiting the extent of competition and choice within the market.

Secondly, if any oversight and/or accreditation function is established it must bear in mind the resources of smaller reviewers and the cost implications it would inflict on them. Any oversight or accreditation function

established must not disproportionately impact smaller reviewers and any costs or additional burden should be proportionate to the size of the reviewer.

Q13 If there is a need for a formal oversight body, which of these functions should be included in its remit – accreditation, monitoring of compliance, dealing with complaints, reviewing and revising the code?

See response to Q12.

Q14 Do you have any suggestions for how oversight arrangements might operate in practice (including who might undertake them and how they might be funded)?

We have no comments.

Actions for listed companies

Q15 Is there a need for some good practice principles aimed at listed companies conducting externally facilitated board valuations? If there is a need for such principles, do you agree that adoption by companies should be voluntary?

We agree that in order for effective board evaluations to take place, there needs to be a balance between the attitude of the company and the quality of service provided. The good practice principles should be reviewed regularly to ensure they are fit-for-purpose and reflect the continually evolving landscape in order to facilitate better engagement between the company and external reviewer in terms of the provision of support and access.

That said, any good practice principles that are introduced must be proportionate, balanced, and indeed, voluntary. This will help create the conditions needed for companies to engage appropriately and allow effective independent board evaluations to take place without impeding the growth of smaller companies that may struggle to comply with the additional administrative burden or cost of applying some of the principles. A company should only aim to adopt the principles if they believe it will enhance the effectiveness of their board evaluation, and when they have the capacity to do so, whereby it will not stymie their growth.

Q16 Do the draft principles cover all the relevant aspects of the relationship between the company and external reviewer? Are they reasonable and appropriate? Do they go far enough?

Yes – we believe that the draft principles cover all the relevant aspects of the relationship between the company and external reviewer, and are reasonable and appropriate. The draft principles should not be extended any further as doing so could make adopting the principles onerous and could inadvertently make them overly prescriptive.

Q17 Should the principles include a requirement that companies should only engage board reviewers that have signed up to the code of practice for reviewers?

No – we echo the concerns as outlined in the consultation in relation to the principles including a requirement that companies should only engage board reviewers that have signed up to the code of practice for reviewers.

Q18 Is there a need for guidance on how companies should report on board evaluations in order to comply with the provisions of the UK Corporate Governance Code?

We do not believe that guidance on how companies should report on board evaluations is necessary, or desirable. Prescriptive guidance on how companies should report on board evaluations runs the risk that companies will adopt a ‘tick-box’ approach. If this approach is adopted, it is also likely that this will give rise to further elements of the annual report being boiler-plated. This will not foster a deeper, more robust, explanation of the board evaluation process and will add no further value to the understanding of users of the annual report. It should be emphasised that effective disclosure on board evaluations should focus on target-setting for improved performance and should not be a description of the processes followed.

If any guidance is introduced, it is important that the guidance issued does not instigate boiler-plate reporting and is proportionate to the size of the company. The issuance of guidance must not inadvertently impact smaller companies, who may not necessarily have the resources to cope with the additional requirements. For smaller companies, the reporting guidance on board evaluations should only encourage a high-level explanation of the board performance evaluation process; that is, the process undertaken, outcomes of the review, and actions taken, should be published in broad terms.

Q19 Does the draft guidance cover all the relevant issues of interest to investors and other users of annual reports? Are the expectations it places on companies appropriate?

See response to Q18.

Q20 Should the independent reviewer be expected to certify that the disclosures made by the company are accurate? If so, what form should this take?

No – we do not believe that certification is necessary. If the company has confirmed that the reviewer is comfortable with the disclosures in relation to the processes and findings this should be deemed sufficient.

Appendix A

The Quoted Companies Alliance Corporate Governance Expert Group

Will Pomroy (Chair)	Hermes Investment Management Limited
Tracy Gordon (Deputy Chair)	Deloitte LLP
Edward Beale	Western Selection PLC
Nigel Brown	Gateley
Amanda Cantwell	Practical Law Company Limited
Jo Chattle	Norton Rose Fullbright LLP
Richie Clark	Fox Williams LLP
Jonathan Compton	BDO LLP
Louis Cooper	C/o Non-Executive Directors Association (NEDA)
Edward Craft	Wedlake Bell LLP
Tamsin Dow	Hogan Lovells International LLP
Peter Fitzwilliam	Mission Marketing Group PLC
David Fuller	CLS Holdings PLC
Nick Gibbon	DAC Beachcroft LLP
Nick Graves	Burges Salmon
Ian Greenwood	Korn Ferry
David Hicks	Charles Russell Speechlys LLP
Alexandra Hockenhull	Hockenhull Investor Relations
David Isherwood	BDO LLP
Daniel Jarman Kalina Lazarova	BMO Global Asset Management
Colin Jones	Candid Compass
Damien Knight	MM & K Limited
Peter Kohl	Kerman & Co LLP
James Lynch	Downing LLP
Marc Marrero	Stifel
Efe Odeka	UHY Hacker Young
Darshan Patel	Hybridan LLP
Sahul Patel	FIT Remuneration Consultants
Phillip Patterson	PricewaterhouseCoopers LLP
Jack Shepherd	CMS
Julie Stanbrook	Misc
Carmen Stevens	Jordans Limited
Peter Swabey	C/o ICSA
Melanie Wandsworth	Faegre Baker Daniels LLP
Kerin Williams	Prism Cosec

