

CAD-01143 Sir Adria

Shareholder retention

COMMITTEE
ON
THE FINANCIAL ASPECTS
OF CORPORATE GOVERNANCE

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23rd December, 1991

Geoffrey Kelly, Esq.,
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c/o Barclays de Zoete Wedd,
Ebbgate House,
2, Swan Lane,
LONDON, EC4R 3TS.

Dear Geoffrey,

I am writing on Sir Adrian Cadbury's behalf to thank you very much for your submission of 19th December, and to confirm that it will be taken into consideration.

Yours sincerely,

Nigel Peace

Nigel Peace
Secretary

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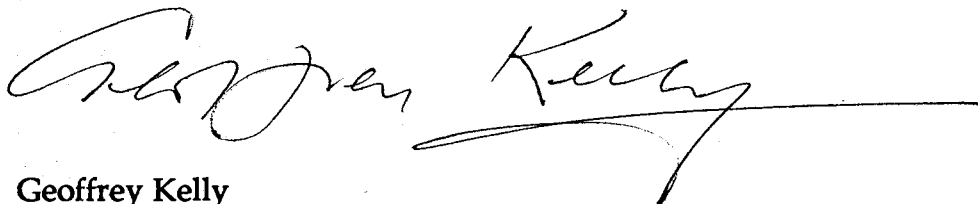
Sir Adrian Cadbury
Chairman
Committee on Financial Aspects
of Corporate Governance
PO Box 433
Moorgate Place
London EC2P 2BJ

19 December 1991

Dear Sir Adrian

As requested, I have pleasure in enclosing a submission to the Committee on Financial Aspects of Corporate Governance by the Institute of Public Relations City & Financial Group. A copy of the report referred to in paragraph 1.4 is also enclosed: if you would like any further copies do please let me know.

Yours sincerely



Geoffrey Kelly
Chairman

As from:
Barclays de Zoete Wedd
Ebbgate House
2 Swan Lane
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**A SUBMISSION TO THE COMMITTEE ON FINANCIAL ASPECTS OF
CORPORATE GOVERNANCE BY THE INSTITUTE OF PUBLIC RELATIONS
CITY & FINANCIAL GROUP, DECEMBER 1991**

1. INTRODUCTION

- 1.1 The Institute of Public Relations City & Financial Group ("the Group") welcomes the opportunity to give evidence to the Committee on Financial Aspects of Corporate Governance ("the Committee").
- 1.2 The Group is concerned with three of the main issues to be addressed by the Committee:
- (i) the communication between boards, shareholders and other shareholders;
 - (ii) the frequency, clarity and nature of corporate reporting;
 - (iii) the responsibilities of executive and non-executive directors and other levels of management for planning, reviewing and reporting on performance.
- 1.3 In announcing the aims of the Committee in May 1991, your chairman, Sir Adrian Cadbury, said: "What is different about this particular project is that it will aim to bring together the fruits of work and study undertaken by a number of groups, and it will do so in a form which will lead to action."
- 1.4 The Group has undertaken such a study, having sponsored the Working Party on the Conduct of Financial Communications ("the Working Party"). This paper is concerned with some of the findings of the Working Party, a copy of whose Final Report ("the Report"), published in 1991, accompanies the paper.

2. BACKGROUND TO THE WORKING PARTY

- 2.1 The Group announced in December 1988 that it was to set up a Working Party to investigate the need, or otherwise, for a self-regulated code of conduct for financial public relations activities.
- 2.2 This initiative was prompted by conversations between members of the Committee of the Group and representatives of the Bank of England, whose Head of Information is an ex-officio member of the Committee. The suggestion was made informally that the Group should examine the question in the light of recent developments in the regulation of the investment industry as a whole.

- 2.3 The Working Party was convened in February 1989, embracing some individuals who were members of the Group and others who were not, but who were engaged in the practice of financial public relations in other capacities. These included representatives of the Public Relations Consultants' Association ("PRCA") and of the Investor Relations Society.
- 2.4 The Working Party held a number of consultative meetings with representatives of regulatory organisations, of major listed companies and of the financial press to examine the issues involved.
- 2.5 The Chairman of the Working Party was Mr Geoffrey Kelly, Director, Corporate Communications, Barclays de Zoete Wedd Limited.
- 2.6 After preliminary discussions, and with the agreement of the Bank of England, the Working Party adopted the following terms of reference:
- 2.7 "To study the role of financial communications practitioners acting for or employed by public companies whose shares are - or are about to be - traded in the UK markets.
- 2.8 "To consult with representatives of the regulatory bodies concerned and with those of other relevant bodies. In the light of these consultations, to consider a code of principles of conduct for those practising financial communications. This will have particular reference to standards of business ethics and to the various regulatory requirements governing relations between companies and the investing communities".
- 2.9 It will be noted that under these terms of reference the Working Party was concerned solely with the financial communications of UK quoted companies with investors and with the market.
- 2.10 It was not concerned with the marketing of retail investment products though these are, too, the subject of extensive statutory and secondary regulation.
- 2.11 In April 1990 the Working Party issued an Interim Report setting out its preliminary findings as a result of their investigations and the evidence they had received.
- 2.12 This interim report was circulated to all members of the Group, to Committees of the IPR, the PRCA, the Investor Relations Society and to other parties who had either given evidence or whose response the Working Party were anxious to elicit.
- 2.13 As a result, further conversations were held with respondents and written comments received from others.
- 2.14 Members of the Working Party are listed in Schedule A of the Report. Lists of the parties interviewed appear in Schedules B and C of the Report.

3. THE WORKING PARTY'S RECOMMENDATIONS

- 3.1 Virtually without exception, the respondents welcomed the main recommendations of the Working Party's Interim Report. These appeared, unchanged, in the Final Report as follows:
- 3.2 Overall, the Working Party have concluded that there is no case for a new free-standing code of conduct governing the practice of financial communications. Were such a code of conduct devised it would amount to no more than a re-statement of codes and regulations already prescribed by Government and other regulators. It certainly could not depart from their prescriptions. It would, moreover, be of limited force and could not be brought to bear against directors and officials of companies and others, who are wholly free under the law and regulations, to conduct their own initiatives in the field, provided they observe the requirements of the law and of the Stock Exchange and Takeover Panel regulations.
- 3.3 These factors argue against the production of a free-standing code of conduct for financial communications. **It is, however, essential that those who practice in this field are fully familiar with all the relevant regulations and persuade their clients or employers to observe them.**
- 3.4 There is therefore a need for a compendium of these regulations as a comprehensive point of reference for practitioners and as an aid to training for new entrants. Because this would be subject to regular revision, as the governing regulations change from time to time, a permanent small committee, representative of the relevant institutions, would have to be set up to carry out the re-editing process.
- 3.5 The Working Party has however identified certain areas where the existing or impending regulations appear to be unsatisfactory. Other cases will no doubt emerge in the future.
- 3.6 It therefore considers that the Institute of Public Relations, the Public Relations Consultants' Association and the Investor Relations Society should establish a permanent joint Committee for Financial Communications Practice.
- 3.7 Part of the Committee's task would be to review periodically the necessary amendments that are bound to arise to the compendium of regulations, as suggested above. A more important role, however, would be to represent the view of practitioners to the regulatory authorities on issues that arise and in particular to comment on aspects of regulations that are unsatisfactory. This process would be greatly assisted if those regulatory bodies were to be prepared to consult the Committee at the drafting stage. Alternatively, they could be invited to send representatives to attend the Committee's meetings.

- 3.8 Points which the Working Party have already identified where such a Committee could make a valuable contribution include:
- (i) The legal status and permissibility of company results advertising.
 - (ii) The new regulations for release of company information through the Regulatory News Service. [Further changes are to be introduced from January 1 1992.]
- 3.9 Such a Committee would also be a suitable forum in which cases of irregular behaviour could be discussed between regulatory bodies and practitioners in the field and where solutions to problems might be discussed.
- 3.10 Support for the establishment of a permanent joint Committee for Financial Communications Practice has been enthusiastically expressed by the Stock Exchange, the Confederation of British Industry, the Securities and Futures Authority and the British Merchant Bankers and Securities Houses Association.
- 3.11 The Governor of the Bank of England, Mr Robin Leigh-Pemberton, in a speech to the Group in December 1991, said: "What the Working Party has very helpfully done is to draw together all of the relevant law and regulations, and to propose a permanent committee to monitor its development and to act as a point of contact with the regulators. That, I think, is a very constructive step. It may even enable a degree of peer group pressure to be brought to bear against those who offend or sail close to the wind."
- 3.12 The Committee for Financial Communications Practice, as recommended by the Working Party, is in the process of being established.

4. FINANCIAL COMMUNICATIONS ABUSES

- 4.1 One concern that led to the formation of the Working Party was that of self-regulation: the need to demonstrate that public relations and investor relations practitioners could conduct themselves correctly and encourage their employers and clients to do likewise when communicating financial information.
- 4.2 Interestingly, the Working Party was given very little evidence of consistent abuse by companies or their financial communications advisers. This would suggest that the actions of the few colour attitudes to the many, a situation not confined to financial communications.

- 4.3 Such criticism as there was tended to centre on the practice of:
- (i) giving selective briefings to individual journalists either to gain heightened media coverage of a company development to the benefit of its share price or,
 - (ii) in the context of contested takeovers, in such a manner as to make it difficult if not impossible for the other party to make a considered response.

4.4 Recently there have been several instances where news of company rights issues has been publicised in the press before an official statement has been made to the Stock Exchange.

4.5 The actions outlined in paragraphs 4.3 (i) and 4.4 are both abuses of the Stock Exchange Yellow Book rules on the publication of price-sensitive information. Paragraph 4.3 (ii) illustrates an abuse of the Takeover Panel's Code as set out in its Blue Book.

5. ENFORCING COMPLIANCE WITH LAWS, RULES AND REGULATIONS

5.1 In paragraph A10 of the appendix of its Report the Working Party states: "At several points in the Interim Report the Working Party noted that where the regulatory authorities discover breaches of their regulations they should be more ready to make public statements to that effect."

5.2 Since the Stock Exchange holds a company responsible for complying with its Yellow Book then, even if the miscreant cannot be clearly identified, it is the company that it should admonish, publicly, for any breach of its rules. No company that values its reputation will enjoy public rebuke : it will want to take steps to avoid any repetition of the misdemeanour.

5.3 In the case of the Takeover Panel, it is the financial adviser who is held responsible for complying with the Panel's regulations, and it is a basic principle of the Code that all shareholders should enjoy equality of information, both as to content and as to time of availability.

5.4 This is a heavy responsibility for the financial adviser to carry: in a takeover battle any board fighting for its survival will seek all possible advantage over its adversary. Yet the financial adviser that allows the company, its public relations or investor relations advisers or its own executives to break the Panel's Code should be subjected to public rebuke.

5.5 A welcome consequence of such rebuke would be that any company involved in a contested takeover bid that retained or recruited financial advisers who had a public record of censure for breaking the Panel's rules would be sending a clear message to the Panel and its adversary about its proposed conduct.

5.6 Unless the regulatory authorities are prepared to act in the manner urged above then, in this Group's view, no amount of encouragement to self-regulation is going to stop those intent on circumventing the rules from doing so.

5.7 Public relations advisers whose employers or clients prefer to operate their financial communications outside the rules, or expect their advisers to act similarly on their behalf, should resign.

6. ANOMALIES WITHIN THE REGULATIONS

6.1 While whole-heartedly supporting the need for compliance with regulations the Working Party noted that some of these rules had been drafted without an eye to their practical effect.

6.2 For example, a company can run the risk of an ill-informed news story, following its announcement of a price-sensitive development, because the Stock Exchange Yellow Book forbids any advance embargoed briefing of the media. In such cases the temptation to ignore the letter of the law in favour of practical commonsense is ever present.

6.3 It was the weight of existing laws, rules and regulations, and their interpretation - with a fresh EC layer yet to be enacted by the British Government - that convinced the Working Party of the need for a body to represent practitioners' views to the authorities. No future financial regulations should reach the rule book without taking full account of the public relations and investor relations practitioners' viewpoints.

7. CONCLUSIONS

7.1 The Group believes that two actions will assist a self-regulatory approach to compliance with the many regulations governing financial communications by or on behalf of UK quoted companies:

- (i) The establishment, already in train, of a permanent joint Committee for Financial Communications Practice as recommended by the Working Party;
- (ii) Stricter policing by the regulatory authorities of existing rules and regulations and the public admonishment of those the authorities hold responsible for any misdemeanour.

7.2 The Group looks forward to the publication of the Committee's draft report on Financial Aspects of Corporate Governance and welcomes the invitation to comment on the draft. It believes the Committee could have a major role to play in reinforcing its own concerns and recommendations within a framework of self-regulation.

Geoffrey Kelly
Chairman