

Fax from the Committee on the Financial Aspects of Corporate Governance

To Sir Adrian Cadbury

Date 21 February 1995

From Gina Cole

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Dear Sir Adrian

OECD conference

I have been in touch with Ambassador Aaron's office. The dinner will be held at this residence at 12 rue Weber, not far from the OECD offices. Apparently guests will be handed a formal invitation on arrival at the conference.

Directors' Independence

I have just had a very interesting conversation with Stuart Bell from PIRC regarding directors' independence. A company on which PIRC provides advice to its members had made a certain statement regarding the independence of their directors. PIRC after investigation has differed with the company's view and advised its clients that in view of the fact that one or more of the directors are not in PIRC's view independent, the company cannot be deemed to be complying with the Code of Best Practice. Discussions between the company and PIRC have reached an impasse and the company have taken legal advice to the effect that once the directors have made the decision on independence, it cannot be challenged by a third party, and a consequence of PIRC doing so might be the company suing them for libel, in that they are questioning the integrity of the directors' judgement.

Two issues arise here. Firstly, the situation would not have arisen had the Committee included a definition of independence in the Code. It is the differing interpretations of independence which have led to the disagreement. This in turn raised the question of whether there is a need for the Code to be amended to include such a definition.

Secondly, beyond the question of whether the individual director is or is not independent, there is the wider issue of whether once a company has made a judgement on independence, this judgement can be challenged by a third party. My layman's view would be that it could, and probably should in cases where a shareholder or other interested party fundamentally disagreed with the directors' judgement. If all statements on independence went unchallenged and were in fact....[end of page 1]