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from Sir Richard Greenbury

31 July 1992

Dear Mr Peace

#### CADBURY REPORT

You have asked for comments on the draft report on Corporate Governance.

We appreciate that the Committee is seeking views on a Code applicable to all UK listed companies, but our comments also unavoidably reflect the customs and practices of Marks and Spencer.

In general, we applaud the principles of openness, integrity and accountability set out by the Committee, and appreciate the need to demonstrate high standards consistent with those principles. Before dealing in more detail with items in the draft where we have particular opinions, we have some general comments.

First, we do not consider that there is one board structure or format which is appropriate for every type of company, industry and business culture.

Secondly, we are concerned that the draft appears to weaken the concept of a unitary board. To be effective, a company must act as a cohesive unit. We are opposed in general terms to proposals that distinguish between the responsibilities of Executive and Non-Executive directors, and which could prove divisive in operation.

Thirdly, we believe that the Code should emphasise more strongly the existing legal duty that each director of a company owes to shareholders for all decisions, whatever particular responsibility he or she may have within a company.

Lastly, we consider that the Report has not adequately addressed the issue of the responsibilities of external auditors and how these should complement the specific internal controls advocated by the Committee.

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More specific comments follow, using the paragraph numbers from the Report:

a) Compliance

Page 10, para 3.7

We do not believe that compliance should effectively be made mandatory by making it a condition of Listing, nor are we convinced that a company's auditors (para 3.10) are necessarily the appropriate agency to endorse compliance.

b) Chairman/Chief Executive

Page 13, para 4.6

We support the need to prevent the undue concentration of power in one position or with a single individual. Where the roles of Chairman and Chief Executive are combined, we believe that there should be appropriate checks and balances, and that a cadre of strong Non-Executive directors is an effective safeguard.

In the end, whatever Code or Regulation may be in place, the issue will be decided by the mix of personalities involved and the particular board structure and circumstances of the Company.

We do not support the suggestion of a Non-Executive leader, believing it to be divisive, and against the principle of a unitary board.

c) Nomination Committees

Page 16, para 4.24

We do not believe that a Nomination Committee should be composed of a majority of Non-Executives, since they are unlikely to have the necessary knowledge to make the decision. We believe it preferable for the Chief Executive to lead the selection of the team, subject to the agreement of both his Executive and Non-Executive colleagues.

d) Audit Committee

Page 17, para 4.29

We agree that each company has a duty to install systems of checks and balances suitable to ensure that Directors, on behalf of shareholders, can be confident of the quality and integrity of the accounts. In the final analysis this often comes down to the quality of the people engaged in the process.

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The essential elements of such checks and balances, in our view, include both strong and independent external auditors and internal financial personnel, with an internal audit department which has unrestricted access to all Directors, Non-Executive and Executive, and vice versa.

To satisfy itself that these factors exist, an Audit Committee, when essential, should comprise both Executive and Non-Executive Directors. Indeed, these functions should ideally be carried out by all members of the board, since every board member should feel responsible and is legally responsible for the company results in total.

- e) Rotation of audit partner  
Page 26, para 5.12

We understand the arguments for the rotation of audit partners, but believe that a thorough understanding of the client company is ultimately a more important consideration.

We have no significant disagreement with the rest of the content of the Report. There are two issues in particular where we need more detail before we can decide how to revise our procedures:

- a) Interim reports
- b) Separate disclosure of directors' salary and performance-related pay, with an explanation of the basis on which performance-pay is measured.

Yours sincerely,



CHAIRMAN

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