CAD-02453 Sir Adrian!

British Rail Pension Trustee Company Limited

Mr N Peace
Secretary
Committee on the Financial Aspects
of Corporate Governance
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o/r HIA53-105

Dear Mr Peace,

Comments on the Draft Report of the Committee on the Financial Aspects of Corporate Governance

I write to submit the observations of the British Rail Pension Trustee Company Limited on the draft 'Cadbury' Report.

The British Rail Pension Trustee Company supervises the investment of over £7billion of investments set aside to provide pensions for some three hundred and thirty thousand employees and former employees of British Rail and the pre-nationalisation railway companies. The Trustee Company welcomes the publication of the report and the initiative taken by the Financial Reporting Council. The Trustee Company shares the Committee's view that the institutions have a responsibility to encourage sound corporate governance. Indeed the Trustee Company has recently adopted its own policy which is attached as Appendix 1. While the Trustee Company concurs with most of the recommendations there are a number of observations it wishes to make on the report.

1. While a voluntary system may have the advantage that it is immediate; flexible; and encourages observation of the spirit of the code rather than just the letter, it is not clear how the code will persuade reluctant companies to follow it. Those who already meet much of the code of good practice or are prepared to do so will cause no problems. Those who provide poorer standards of corporate governance - and who are the ones needing to change - will presumably not comply and give justification for their action (like Sir Owen Green's widely published views on non-executive directors). It would be left to the institutions to exercise persuasion but many of these companies are unlikely to change their current stance. If so, the code will provide a good standard for those who are willing to change but will have little effect on those who do not wish to comply and where change may be most needed.

2. The most pressing issue is for full and transparent reporting by company boards of their activities. This is most likely to be achieved by tighter accounting standards and fuller reporting requirements. Users of the accounts should be able to have faith in them and the going concern nature of the business. Because of this a recommendation of the Committee to review the law following the Caparo judgement would have been welcome.

3. On balance the Committee should have recommended the division of the roles of the chief executive and chairman posts as basic to best practice. If boards are to monitor the performance of management then they must be unfettered and it is difficult to see how the chief executive can be impartial when carrying out the chairman's role in this area of activity. The Committee's suggestion of a head of non-executive directors is an unhappy compromise, more likely to cause confusion and possibly even division among the board, than to strengthen its monitoring function.

4. The passing reference to duties of directors to pension funds clearly does not do justice to a topic of great importance and current interest but this is being looked at by the Goode Committee.

5. Good practice should require the board to review its own effectiveness annually and look to ways of improving it.

6. The additional duties proposed for non-executive directors (together with the previously mentioned head of non-executives) may bring a division into the board if non-executives are to take on a more supervisiory role. It is probably more important for companies to describe their internal monitoring procedures and formally report on their operation in the annual report than for a general duty to monitor being ascribed to particular members of a unitary board. While direct involvement of non-executives is to be encouraged (especially in audit and remuneration committees) the additional time restraints must not reduce the number of people prepared to serve.

Yours sincerely,

David Adams

David Adams
Chief Executive

BRITISH RAIL PENSION TRUSTEE COMPANY LIMITED

CORPORATE GOVERNANCE : POLICY STATEMENT

Introduction

1. The British Rail Pension Trustee Company (BRPTC) relies on the long term quality of international equity markets to safeguard the pensions of past and present Railway staff. As at 31 March 1992, the equity investments of the Fund were valued at £5.4bn, equivalent to 73% of the total assets under management. United Kingdom equity investments were £3.6bn, 67% of total equity investment.

2. Because of its size BRPTC inevitably holds substantial stakes in many UK companies. It has 17 holdings which exceed 5% of companies equity. In 53 companies a stake of 3% or more is disclosed as required by the Companies Act. Size alone requires a responsible approach to corporate governance. The interest of pension scheme members in the long term security of investment markets is also a paramount concern. BRPTC's corporate governance policy has two main aims: to support and promote efficient and effective equity markets and to protect shareholder value.

3. The main focus of the policy at present is upon UK companies. With the growing internationalisation of investment markets and portfolios, an important area for future development will be the major overseas markets in which BRPTC also has substantial investment holdings.

Current Policy

4. In exercising its share ownership responsibilities in respect of UK companies, BRPTC adopts the following general policies:

   4.1. voting on resolutions placed before company meetings;

   4.2. meeting company managements regularly where a Companies Act disclosable interest is held and periodic formal attendance at company AGMs where very large interests are held;

   4.3. actively supporting the work of the Accounting and Auditing standard setting bodies, with particular emphasis on improvements in reporting quality and clarity;

   4.4. co-operating with and supporting, wherever possible, the promotion of best corporate governance practice by the National Association of Pension Funds (NAPF), Institutional Shareholders Committee, and the Association of British Insurers (ABI);

   4.5. establishing informal links with other large investors as a means of exchanging information on matters of common concern.

5. In both its formal and informal contacts with company managements BRPTC will encourage best practice as exampled by:

   5.1. proper structuring of company Boards including the separation of the roles of chairman and chief executive, the presence of an appropriate number of independent and capable non executive directors and suitable arrangements for audit, and remuneration (including directors' incentive schemes) committees;

   5.2. fixed tenure of office for directors, normally three years, subject to re-election;

5.3. independent appraisals of proposed management buyouts of part or all of a company.

6. Wherever possible BRPTC will support the recommendations of best practice made by NAPF, ABI, Institutional Shareholders Committee, other institutional groups and official bodies (e.g. the Cadbury Committee).

7. Additionally a more formal reporting and liaison structure is being developed with BRPTC's investment managers, preliminary steps are being taken to form links with overseas institutions (initially in North America) and a calendar of regular monitoring and development reviews is being established for the Policy

Conclusion

8. BRPTC is conscious that its responsibility, first and foremost, is to the membership of the pension schemes on whose behalf it invests. None of the activities listed above imply a collegiate approach towards corporate governance. The strict criterion on which all decisions will be based is the promotion of the long term interest of scheme members and the protection of their current and future pensions.

David Adams
Chief Executive
June 1992