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COMMITTEE

ON

FINANCIAL ASPECTS  
OF COMPANY GOVERNANCE

PO Box 433  
Moorgate Place  
London EC2P 2BJ  
Tel: 071-628 7060 ext 2565  
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David Walker's letter

25/9/92

1st July, 1992

Edward Adeane, Esq.,  
Hambros, plc,  
41, Tower Hill,  
LONDON, EC3N 4HA.

Dear Mr Adeane,

Thank you for your letter of 24th June. By 'independent and free of any business or financial connection with the company', the Committee means that non-executive directors who qualify as independent should be independent of management and free of any business or financial (or other) relationship which could interfere with the exercise of their independent judgement.

I would have thought that in the third of your examples, the non-executive director's independence would have been compromised, but not in the first two. However it should be for the board itself to make a judgement in each case, taking into account all the circumstances of the individual concerned.

I hope this is helpful. The Committee recognises that it would be very difficult to draw up a detailed, hard and fast definition of 'independent' to apply in all cases.

Yours sincerely,

Nigel Peace

Nigel Peace  
Secretary

24th June 1992

Nigel Peace Esq  
Secretary  
Committee on the Financial Aspects  
of Corporate Governance  
P O Box 433  
Moorgate Place  
LONDON  
EC2P 2BJ

*Dear Mr. Peace,*

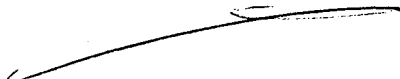
Draft Report of Cadbury Committee

I am uncertain as to the intended effect of paragraph 2.2 of the proposed Code of Best Practice. Do the words "...independent and free of any business or financial connection with the company..." mean that the "independent" non-executive director should not, for instance, have an account with the Bank of which he is a director, or a life policy with the Insurance Company of which he is on the Board? Again, if for instance he was a director of a Merchant Bank advising the company of which he was a non-executive director, would that mean that he was not "independent"?

If the answer to all these questions is "Yes", I suspect that there may not be enough potential non-executives of the appropriate calibre to sit on the Boards of the 1800 or so companies listed on the Stock Exchange.

*Yours sincerely,  
Edward Adeane*

Edward Adeane.





**Lloyds  
Bank**

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*Ach'd*

*No. 10.*

Company Secretary

Mr. Nigel Peace,  
Secretary,  
Committee on the Financial  
Aspects of Corporate Governance,  
P.O. Box 433,  
Moorgate Place,  
London. EC2P 2BJ

Your Ref :

Our Ref :  
AJM/0620t

Date :  
25th September, 1992

*Dear Mr Peace,*

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

I refer to my letter dated 31st July, 1992, which you acknowledged on 3rd August, 1992, about your committee's draft report and the concept of independent non-executive directors.

Sir David Walker, one of our deputy chairmen, was asked by Sir Adrian if we wished to suggest suitable wording to assuage the concern expressed in my letter.

We understand that the British Bankers' Association has made a suggestion in this area but we believe it does not go far enough. We are keen to avoid a situation where, for example, the chairman of one of our major corporate customers would not be regarded as an independent non-executive director on our board.

I suggested to Sir David that the following definition might be used in your committee's final report:

A non-executive director should be regarded as independent if he or she and any connected person is free of any material business or financial connection with the company.

For these purposes "connected person" would have the same meaning as in section 346 of the Companies Act 1985 and "material" would have the same meaning as in paragraph 17(2) of schedule 6 to that act.

continued .....



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Company Secretary

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That would mirror the formula for connected persons in the stock exchange model code for securities transactions by directors.

Sir David felt that your committee might consider my suggested wording to be too legalistic for a code of practice. His suggestion is for wording as follows:

The majority of non-executive directors on a board should be independent and, save for their fees or shareholding, without business or financial connection of a kind involving dependence on the company.

However, he recognises that that definition would be open to interpretation.

I am sorry that it has taken so long to respond to Sir Adrian's request but hope that these comments might be helpful.

*Yours sincerely,*

*Alastair Michie*

A.J. Michie  
Secretary

c.c. Sir David Walker, Deputy Chairman



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Company Secretary

Mr. Nigel Peace,  
Secretary,  
Committee on the Financial  
Aspects of Corporate Governance,  
P.O. Box 433,  
Moorgate Place,  
London. EC2P 2BJ

Your Ref :

Our Ref :  
AJM/C7990c

Date :  
31st July, 1992

Dear Mr. Peace,

COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE

At our board meeting this morning, we discussed your committee's draft report.

There is one aspect upon which we are not clear and which, depending upon the interpretation, could have a material effect on us and other banks.

Paragraph 2.2 of the suggested code of best practice states that the majority of non-executive directors should be "independent and free of any business or financial connection with the company apart from their fees and shareholdings". Most, if not all, of our directors are customers of the bank and, therefore, cannot be said to be "free of any financial connection with" it.

ProNed, in their code of recommended practice on non-executive directors, which is recognised by the stock exchange in their yellow book, state that "independence is more likely to be assured when the non-executive director ..... is not (whether personally or through his or her employer) a significant customer of ..... the company". The word "significant" in that quotation is a help. However, even with that there are difficulties for this and other banks. We have a number of non-executive directors who are chairmen, chief executives or executives of major companies which have significant banking connections with us and other banks.

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I wonder if your committee would be prepared to consider this point and perhaps establish a clear definition of "independence"? Obviously, it would be desirable if we were able to regard the type of director described in the final sentence of the preceding paragraph as "independent" for the purposes of your committee's proposed code.

In case it would be helpful to you, I enclose a copy of our article 99, which shows how we deal with subjects arising in proceedings of our board, where directors have conflicts of interest.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "A.J. Michie".

A.J. Michie  
Secretary.

Restrictions  
on voting.

99.(1) Save as herein provided, a director shall not vote in respect of any contract or arrangement or any other proposal whatsoever in which he has any material interest otherwise than by virtue of his interests in shares or debentures or other securities of or otherwise in or through the company. A director shall not be counted in the quorum at a meeting in relation to any resolution on which he is debarred from voting.

(2) Subject to the provisions of the statutes, a director shall (in the absence of some other material interest than is indicated below) be entitled to vote (and be counted in the quorum) in respect of any resolution concerning any of the following matters:

(a) the giving of any security or indemnity to him pursuant to the provisions of article 147 or in respect of money lent or obligations incurred by him at the request of or for the benefit of the company or any of its subsidiaries;

(b) the giving of any security or indemnity to a third party in respect of a debt or obligation of the company or any of its subsidiaries for which he himself has assumed responsibility in whole or in part under a guarantee or indemnity or by the giving of security;

(c) any proposal concerning an offer of shares or debentures or other securities of or by the company or any of its subsidiaries for subscription or purchase if he is or is to be interested as a participant in the underwriting or sub-underwriting of such offer;

(d) any proposal concerning any other body corporate in which he is interested, directly or indirectly and whether as an officer or shareholder or otherwise, provided that he (together with persons connected with him within the meaning of section 346 of the act) is not beneficially interested in 1 per cent. or more of the issued shares of any class in such body corporate (or in any third company through which his interest is derived) or of the voting rights available to members of the relevant body corporate (any such interest being deemed for the purpose of this article to be a material interest in all circumstances);

(e) any proposal concerning the adoption, modification or operation of a superannuation fund or retirement benefits scheme or employees' share scheme under which he may benefit; or

(f) any proposal concerning any insurance which the company is empowered to purchase and/or maintain for or for the benefit of any directors or for persons who include directors of the company provided that for the purposes of this sub-paragraph insurance shall mean only insurance against liability incurred by a director in respect of any act or omission by him referred to in article 83(2) or any other insurance which the company is empowered to purchase and/or maintain for or for the benefit of any groups of persons consisting of or including directors of the company.

(3) Where proposals are under consideration concerning the appointment (including fixing or varying the terms of appointment) of two or more directors to offices or employments with the company or any company in which the company is interested, such proposals may be divided and considered in relation to each director separately and in such case each of the directors concerned (if not debarred from voting under the proviso in paragraph (2)(d) of this article) shall be entitled to vote (and be counted in the quorum) in respect of each resolution except that concerning his own appointment.

(4) If any question shall arise at any time as to the materiality of a director's interest or as to the entitlement of any director to vote and such question is not resolved by his voluntarily agreeing to abstain from voting, such question shall be referred to the chairman (or, in the case of a question as to the materiality of an interest or entitlement to vote of the chairman, the deputy chairman) of the meeting and his ruling in relation to any other director shall be final and conclusive, except in a case where the nature or extent of the interest of such director has not been fairly disclosed.

(5) The company may by ordinary resolution suspend or relax the provisions of this article to any extent or ratify any transaction not duly authorised by reason of a contravention of this article.





GUINNESS MAHON & CO. LIMITED

STEWART DOUGLAS-MANN  
MANAGING DIRECTOR, CORPORATE FINANCE

SDM/1606.1/PLS

Sir Adrian Cadbury,  
Chairman,  
Committee on the Financial Aspects of Corporate Governance,  
P.O. Box 433,  
Moorgate Place,  
London, EC2P 2BJ.

16th June 1992

*Dear Sir Adrian*

I have very recently had a discussion with the Chairman of a listed client company about corporate governance and my experience may be of some relevance to your Committee. Our discussion focused on the correct interpretation of the recommendation in para 4.9 of the draft Report. In this connection, you will recall that this addresses the issue of the independence of non-executive directors. Had you been party to my discussion, you would have appreciated that the present wording is causing confusion and for that reason is, in my view, unsatisfactory.

My suggestion is that the following wording would provide better guidance on the issue of what constitutes true independence:-

"We recommend, therefore, that the majority of non-executives on a board should be independent and free of any business or financial connection with the company apart from their fees as directors and any shareholding. In this latter connection, independence is difficult to demonstrate where the shareholding is significant either in relation to the individual's wealth or the capitalisation of the company."

I hope that the foregoing will be given consideration by your Committee in finalising its Report.

I look forward to seeing you at Henley.

*Yours*  
*Stewart*

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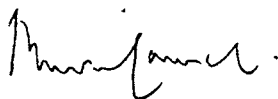
5 August 1992

Dear Mr Peace

We realise that the time for the submission of comments to you on the draft Report expired on 31 July but it would be very much appreciated if you were to feel able to receive one further comment from us by way of addition to the Memorandum that we sent you last month.

This further comment arises under paragraph 4.9 of the draft Report and paragraph 2.2. of The Code of Best Practice. Putting it very briefly, we consider that the phrase "free of any business or financial connection" in both paragraphs is expressed more widely than is appropriate and that it needs to be qualified by the insertion of "substantial" (or an equivalent word) between 'any' and 'business'.

Yours sincerely



M N KARMEL  
Senior Deputy Secretary