



PSOJ Corporate Governance Code 2016

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FOREWORD

Ten years ago the Private Sector Organisation of Jamaica (PSOJ) took the progressive decision to introduce the country's first Corporate Governance Code, which was also a first for the Caribbean. This was done against the background of a surge in international financial crises and Jamaica's own financial crisis in the latter half of the 1990s. These crises raised serious concerns about the reporting relationships and the accountability of management and directors of publicly owned companies to their stakeholders.

In light of such concerns, the PSOJ established a Corporate Governance Committee in October 2001 with the mission to become the key influencer in the delivery and adoption of corporate governance best practices, by providing access to knowledge and learning resources for our members and leaders of business enterprises so they could effectively compete in the global market. The strategic objectives of the Committee are:

- To develop and establish corporate governance guidelines that will facilitate implementation of best practices through a Code on Corporate Governance.
- To conduct director training programmes
- To promote awareness of corporate governance principles and the impact that well implemented principles can have on investor confidence.
- To provide continuing public education and awareness of corporate governance best practices.
- To make corporate governance knowledge resources accessible to relevant stakeholder groups.
- To collaborate on a continuing basis with other associations and agencies locally and regionally on corporate governance issues.
- To influence and comment on any corporate governance policy issues and assess their impact on the business environment.

Since 2001, the Corporate Governance Committee has written three (3) Codes primarily targeted at medium and large sized companies, launched in February 2016 the first MSME Corporate Governance Code for the region and have successfully trained over one thousand (1,000) existing and potential directors. This phenomenal journey continues to support our mission of improving corporate governance across Jamaica, while keeping current with globally accepted governance practices. It is in this light that the PSOJ thought it important to revise and expand the 2009 Code. The 2016 Code will provide practical guidelines for business leaders to further enhance corporate governance practices within their entities and is focused particularly at companies listed on the Jamaica Stock Exchange, however unlisted companies will also find the Code a useful tool to improve corporate governance practices in their entities. In order to ensure the continued relevance and currency of the Code extensive research was also conducted to identify current practices in developed and developing countries like Jamaica.

The 2016 Code contains broad principles along with some specific provisions and now includes a new principle on Corporate Sustainability and Ethics. As in our previous Codes, companies, especially listed companies, are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code's provisions or - where they have not - to provide an explanation. This commentary should be included in the company's annual report.

The increased competition among countries to attract foreign direct investment and the changing global environment places Jamaican companies at a crossroads to improve efficiency while practicing good corporate governance. As such, the principles and practices presented in this Code represents current globally accepted corporate governance best practices, which have been tailored to our specific country needs.

The PSOJ Corporate Governance Code 2016 should therefore provide medium and large sized companies with an opportunity to review and update existing corporate governance principles while using these guidelines to further enhance boardroom practices. Over the next few months the PSOJ Corporate Governance Committee will continue to actively deliver corporate

governance training for existing and potential directors using the new Code framework.

The development of this revised Code has gone through extensive consultation and fostered many partnerships. We are therefore most appreciative to the Development Bank of Jamaica (DBJ) which provided grant assistance thus enabling the required research to be completed. We also gratefully acknowledge the input of some listed companies and the Jamaica Stock Exchange who actively participated in the extended consultation phase and added considerable value to the process. Special thanks must also be extended to the IFC World Bank Corporate Governance (CG) Advisory Group (formally the Global Corporate Governance Forum) who conducted the initial draft review and continued to support the committee throughout the process. Finally and by no means least, our thanks must go to Suzanne Goldson who led the Sub-Committee review, our hard working Research Assistant, Gabrielle Grant and the members of the Corporate Governance Committee who reviewed the final draft and offered their professional guidance.

We continue to be encouraged by the corporate governance progress Jamaican companies are making since the publication of our first PSOJ Corporate Governance Code in 2006. It is therefore our strong belief that this updated Code will further deepen the culture of good corporate governance in the private sector as Jamaica strives to become *“the place of choice to live, work, raise families and do business”*.

Greta Bagues

Chairman,

Corporate Governance Committee

MEMBERS OF THE CORPORATE GOVERNANCE COMMITTEE

Miss Greta Bogues	Chairman
Mr. Dennis Chung	Chief Executive Officer, PSOJ
Mr. Christopher Bovell	Dunn Cox
Dr. Howard Haughton	Holistic Risk Solutions Limited
Mrs. Tracey Campbell	PricewaterhouseCoopers
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Mrs. Marlene Street-Forrest	The Jamaica Stock Exchange (JSE)
Mr. David Hall	Institute of Internal Auditors (Jamaica Chapter)
Mrs. Gina Phillipps-Black	Myers, Fletcher & Gordon
Miss Rochelle Cameron	FLOW
Mr. Garth Kiddoe	Institute of Chartered Accountants of Jamaica
Mr. Alastair Macbeath	Mondial
Mr. Patrick McDonald	Hart Muirhead Fatta
Mrs. Camille Facey	L. Howard Facey & Co.
Mr. Robert Hamilton	Financial Services Commission (FSC)
Ms. Barbara Alexander	Myers, Fletcher & Gordon
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APPROACH

The 2016 Corporate Governance Code has been designed specifically to further enhance corporate governance best practices in Jamaica’s business operations. Organisations that have already embarked on a path of excellence in corporate governance will also be able to use this resource as a benchmark in reviewing their current practices and updating as required.

The PSOJ is very pleased that small and medium sized businesses which have not yet formalised their governance systems will now be able to use the PSOJ MSME Corporate Governance Code 2016 to develop their framework for engendering a culture of enlightened stewardship, streamline key procedures and generally improve governance practices. As such, this Code focuses primarily on medium and large sized companies, especially those companies listed on the Jamaica Stock Exchange (JSE) .

The components of a corporate governance approach seek to address relationships, decision-making and operational systems and are applicable to all sized businesses. Establishing strategic direction, executing strategy and managing risks as well as ensuring compliance with corporate policies, standards and procedures are pursuits common to every type of business.



Guiding Principles

The PSOJ sees the 2016 Code as another important part of Jamaica’s corporate governance framework, which is supported by the country’s various laws and regulations. Given Jamaica’s vision of achieving the status of a developed country, it is important for us as a country to ensure that we have a framework that embodies the 2015 Six (6) Principles of Corporate Governance developed by the G20/Organisation of Economic Cooperation and Development (OECD)¹. These principles are noted hereunder:

¹G20/OECD, *Principles of Corporate Governance* (Paris: OECD, 2015). Available at: <http://www.oecd-ilibrary.org/>

I. Ensuring the Basis for an Effective Corporate Governance Framework

“The corporate governance framework should promote transparent and fair markets, and the efficient allocation of resources. It should be consistent with the rule of law and support effective supervision and enforcement”

II. The Rights and equitable treatment of Shareholders and Key Ownership Functions

“The corporate governance framework should protect and facilitate the exercise of shareholders’ rights and ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.”

III. Institutional investors, stock markets and other intermediaries

“The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.”

IV. The Role of Stakeholders in Corporate Governance

“The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.”

V. Disclosure and Transparency

“The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.”

VI. The Responsibilities of the Board

“The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board’s accountability to the company and the shareholders.”

The OECD Secretary General, Angel Gurría, has stated that the principles “clearly identify the building blocks for a sound corporate governance framework and offer practical guidance for implementation at the national level. Additionally, they reflect experiences and ambitions in a wide variety of countries at different stages of development with varying legal systems”.

The PSOJ CG Committee have found these principles along with other global CG Codes to be evolutionary and as such have been used to develop the framework for the revised 2016 Code.

The 2016 Code has been broken down into seven (7) key principle sections as noted below:

- A. Directors
- B. Board Effectiveness
- C. Remuneration
- D. Accountability & Audit
- E. Relations with Shareholders
- F. Timely and balanced disclosures
- G. Corporate sustainability and ethics

Each section has a main principle which is reinforced by supporting principles followed by code provisions that provide full details on how the principles should be implemented. The new principle introduced in this Code relates to corporate sustainability and ethics which reflects new global governance thinking that supports the overall sustainable development of companies.

The Code on Corporate Governance – Best Practice

This Code of Best Practice draws heavily on Codes published by other jurisdictions, including the UK, Australia, South Africa, Trinidad & Tobago and Barbados.

The Code is intended to guide companies in implementing good practices in corporate governance in Jamaica. This Code has been developed to apply on a comply or explain basis. While it is expected that companies will comply wholly or substantially with the recommendations, companies may elect not to comply in particular circumstances, if good governance can be achieved by other means, provided that they explain their departure from the Code. These recommendations are therefore not mandatory in that sense and further, cannot, in themselves, prevent corporate failure or poor corporate decision-making. They represent international best practices that all companies should seek to follow.

By implementing the comply or explain regime, the recommendations are framed in such a way that if companies deem that any recommendation is inappropriate for their business, or more time is needed for implementation, they have the flexibility to adopt such recommendation in the future, or not at all, provided that an explanation is given.

The PSOJ recommends that the companies listed on the Jamaica Stock Exchange (JSE) describe, in their annual report and accounts, their corporate governance from two perspectives: The first dealing generally with their adherence to the Code's main principles, and the second dealing specifically with the explanations for non-compliance with any of the Code's provisions. These descriptions together should provide shareholders with a clear and comprehensive picture of a company's governance arrangements in relation to the Code as a criterion of good practice.

The PSOJ's Corporate Governance Committee encourages the Association's members and all registered companies in Jamaica to use this Code as the golden standard against which to measure themselves and also as a baseline in examining their corporate governance practices. Companies must, given the size, stage of development, industry and complexity of their business, determine how best to implement these best practices to suit their particular circumstances. Shareholders should be aware

that the size and complexity of the company and the nature of the risks and challenges it faces will significantly influence the need for departures from the Code, and these should not necessarily be viewed negatively. This Code is built on the premise that departures will be adequately explained and justified to shareholders. Shareholders should engage in a dialogue with the company if they do not accept its position and where appropriate to put such views in writing.

Laws, Regulations & Rules

The Code complements and should be used in conjunction with the legislation, rules, and regulations that define how companies should be governed in Jamaica. These at present include, inter alia:

- The Companies Act
- The Financial Services Commission Act
- The Banking Services Act
- The Securities Act
- The Insurance Act
- The Pensions (Superannuations Funds and Retirement Schemes) Act
- The Protected Disclosures Act
- The Public Bodies Management & Accountability Act
- The Rules of the Jamaica Stock Exchange

There are other Acts which affect governance in the workplace, based on the nature of the business and other factors. These include the Proceeds of Crime Act, The Factories Act and The Corruption Prevention Act.

Directors and management are expected to be reasonably aware of all laws, regulations and rules that affect the company and to comply with those laws, regulations and rules at all times.

DEFINITIONS

Chairman - The director elected by the board who is responsible for presiding over and leading the board or committee meetings. The term Chairman includes both the masculine and feminine genders.

Corporate Citizenship - Responsible corporate citizenship implies an ethical relationship of responsibility between the company and the society in which it operates. As responsible corporate citizens of the societies in which they do business, companies have, apart from rights, also legal and moral obligations, to their economic, social and natural environments. As a responsible corporate citizen, the company should protect, enhance and invest in the wellbeing of the economy, society and the natural environment.

Corporate Social Responsibility - This is an important and critical component of the broader notion of corporate citizenship. One is a good corporate citizen, inter alia, by being socially responsible. Corporate social responsibility is the responsibility of the company for the impacts of its decisions and activities on the society and the environment. Through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; by taking into account the legitimate interests and expectations of stakeholders; compliance with applicable law and consistency with international norms of behaviour; integrated throughout the company and evidence in its relationships.

Disclosure - Refers to information that is made publically available regardless of the format or the disclosure platform or medium.

Diversity - This is an important consideration for board appointments and refers to the board having an appropriate range of persons that aims to cultivate a broad spectrum of attributes and characteristics. These include skills, experience, competence, age, gender, independence, among others.

Ethics -The terms 'Ethics' and 'morality' can be used interchangeably. This refers to that which is good or right in human interaction. Ethics involves three key, interlinked, concepts – that of 'self', 'good', and 'other'. Thus, one's conduct is ethical if it gives due consideration not only to that which is good for oneself, but also good for others.

Executive Director - A director who is employed to the company and is normally responsible for aspects of the entities day to day operations.

Independent Non-Executive Director - A director who is free of any interest, position, association or relationship that might influence or reasonably be perceived to influence, in a material respect his or her capacity to bring an independent judgment to bear on issues before the board and to act in the best interest of the entity and its shareholders generally.

Independence - Independence is the absence of undue influence and bias which can be affected by the intensity of the relationship between the director and the company.

Lead Independent Director - A director nominated to perform this role as outlined in A.3.1.

Non-executive Director - A director who is not an executive director.

Risk Management - The identification and evaluation of actual and potential risk areas as they pertain to the company as a total entity, followed by a process of either avoidance, termination, transfer, tolerance (acceptance), exploitation, or mitigation (treatment) of each risk, or a response that is a combination or integration of these.

Senior Management - The first layer of management below board level.

Significant Shareholder - A shareholding of twenty-five percentum (25%) of the aggregate shareholding of a company.

Small Companies - A company that is so defined under the Seventh Schedule of the Companies Act, as amended.

Stakeholders - Any group affected by and affecting the company's operations.

INTERPRETATION OF CODE

Any reference to "him" or "her" in this code includes both the masculine and feminine genders or either of them.

A. DIRECTORS

A.1 THE BOARD

Main Principle

Every company should be headed by an effective board, which is collectively responsible for the long term success of the company.

Supporting Principles

The board's role is to provide entrepreneurial leadership to the company within a framework of prudent and effective controls, which enables risk to be assessed and managed. The board should articulate the vision and mission of the company, set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company to meet its objectives and review management performance. The board should set the company's values and standards and ensure that its obligations to its shareholders and others are understood and met. Each director must act in what he or she considers to be the best interest of the company consistent with their statutory duties ².

The board will typically be responsible for:

- a) affirming the company's vision and mission and defining the strategic goals, while providing input into and final approval of management's development of the corporate strategy and performance objectives;
- b) overseeing the business of the company, including its control and accountability systems, and reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct, and legal compliance;
- c) appointing and removing the chief executive officer, or its equivalent;
- d) monitoring senior executives' development, performance and implementation of strategy;

² For directors of Jamaican incorporated companies, these duties are set out in Section 174 of the Companies Act 2004. For directors of Jamaican financial services, these duties are set out in legislation such as the Banking Services Act, the Insurance Act and the Securities Act.

- e) as appropriate ensuring adequate resources are available to achieve the company's strategic objectives;
- f) approving and monitoring the progress of significant or major capital expenditure, capital management, and acquisitions and divestments;
- g) approving and monitoring financial and other reporting;

Code Provisions

- A.1.1 The composition of the board should enable this important decision-making body to properly exercise its role and add value to the company and all shareholders. The number of directors, diversity and experience, skills and knowledge, and the directors' ability to independently challenge the management and provide strategic advice on the direction of the company are all elements that shape the board's effectiveness. Diversity on the board should relate to academic qualifications, technical expertise, relevant industry knowledge and gender.
- A.1.2 The board should meet sufficiently and regularly and as frequent as may be required to discharge its duties effectively. There should be a formal schedule of matters specifically reserved for its decision. The precise matters reserved to the board and delegated to senior executives will depend on the size, complexity and ownership structure of the company, and will be influenced by its tradition and corporate culture, and by the skills of directors and senior executives.
- A.1.3 The annual report should identify the Chairman, the Deputy Chairman (where there is one), the lead independent director (where there is one), the Chief Executive Officer, and the Chairmen and members of the Board committees. It should also set out the number of meetings of the board and those committees and individual attendance of directors.
- A.1.4 The company should arrange appropriate insurance cover in respect of legal actions brought against its directors and/or the Company Secretary in the discharge of their duties in such capacities as permitted by section 204 of the Companies Act.

A.2 CHAIRMAN AND CHIEF EXECUTIVE OFFICER

Main Principle

There should be a clear division of responsibilities between the running of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision.

Supporting Principle

The Chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda. The Chairman is also responsible for ensuring that the directors receive accurate, timely and clear information. The Chairman should ensure effective communication between company and its shareholders. The Chairman should also facilitate the effective contribution by non-executive directors in particular and ensure constructive relations between executive and non-executive directors.

Code Provisions

A.2.1 The roles of Chairman and Chief Executive Officer should not be exercised by the same individual. The division of responsibilities of the Chairman and Chief Executive Officer should be clearly established.

The nature of the division of responsibility may vary with the maturity and stage of development of the company. It is recommended that companies regularly review the balance of responsibilities to ensure that the division of functions remains appropriate for the needs of the company at each particular stage in its development.

A.2.2 The Chairman should on appointment, satisfy the independence criteria set out in B.1.1 below. A person who ceases to be Chief Executive Officer should not immediately go on to be the Chairman of the same company.

If exceptionally, a board decides that a CEO should become the Chairman, the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment and in the company's next annual report.

A.3 NON-EXECUTIVE DIRECTORS

Main Principle

As part of their role as members of a board, non-executive directors should constructively challenge, help develop and approve proposals on strategy.

Supporting Principle

Non-executive directors should scrutinize the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in succession planning and in appointing, and, where necessary, removing executive directors.

Code Provisions

A.3.1. Where the Chairman of the board is not independent, the board should appoint one of the independent non-executive directors to be the lead independent director to provide a sounding board for the Chairman and to serve as an intermediary for the other directors when necessary. The lead independent director (where there is one) should be available to shareholders if they have concerns where contact through the normal channels of Chairman, Chief Executive Officer or other executive directors, has failed to resolve, or for which such contact is inappropriate.

A.3.2. The Chairman should hold meetings with the non-executive directors without the executives present. Led by the lead independent director (where there is one), the non-executive directors should meet, without the Chairman present at least annually

to appraise the Chairman's performance and on such other occasions as are deemed appropriate.

A.3.3. Where directors have concerns about the running of the company or a proposed action, which cannot be resolved, they should ensure that their concerns are appropriately recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the Chairman, for circulation to the board, if they have any such concerns.

B. BOARD EFFECTIVENESS

B.1 THE COMPOSITION OF THE BOARD

Main Principle

The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.

Supporting Principles

The board should be of sufficient size that the requirements of the business can be met and that changes to the board's composition and that of its committees can be managed without undue disruption. The board should not be so large as to be unwieldy.

The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision making process. The value of ensuring that committee membership is refreshed and that undue reliance is not placed on particular individuals should be taken into account in deciding Chairmanship and membership of committees. No one other than the committee Chairman and members is entitled to be present at a meeting of Board committees, but others may attend at the invitation of the committee.

Code Provisions

B.1.1. The board should identify in the annual report each non-executive director it considers to be independent. The board should determine whether the director is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgment. The board should state its reasons if it determines that a director is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the director:

- has been an employee of the company or group within the last three years;
- has, or has had within the last three years, a material business relationship with the company either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
- has received or receives additional remuneration from the company apart from a director's compensation, participates in the company's share option or a performance related pay scheme;
- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder.

A former Chief Executive Officer will not qualify as an independent director unless there has been a period of at least three years between the date on which he ceased employment with the company as CEO and the date of his appointment to the board.

The board should regularly assess whether each non-executive director is independent. Each non-executive director should provide to the board all information that may be relevant to this assessment. If a director's independent status changes, this should be

disclosed and explained in a timely manner to the market.

B.1.2 At least half the board, excluding the Chairman, should comprise non-executive directors determined by the board and/or the Company's Corporate Governance Charter/ Policy to be independent.

B.2 APPOINTMENTS TO THE BOARD

Main Principle

There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.

Supporting Principles

Appointments to the board should be made on merit and against objective criteria and with due regard for the benefits of diversity on the board, including gender. Care should be taken to ensure that appointees have enough time available to devote to the job. This is particularly important in the case of the Chairman. The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board, as required.

Induction procedures should be in place to allow new directors to participate fully and actively in board decision-making at the earliest opportunity. To be effective, new directors need to have a good deal of knowledge about the company and the industry within which it operates.

An induction programme should be available to enable new directors to gain an understanding of good corporate governance including:

- the company's financial, strategic, operational and risk management position
- the rights, duties and responsibilities of the directors
- the roles and responsibilities of senior executives
- the role of board committees.

Code Provisions

B.2.1 There should be a Corporate Governance(CG) or Nomination Committee or other Board Committee empowered with the mandate to lead the process for board appointments and make recommendations to the board. A majority of members of the CG or Nomination or other Board committee should be independent non-executive directors. An independent non-executive director should chair the committee, however the Board Chairman should not chair the Corporate Governance or Nomination Committee or other Board Committee empowered with the mandate to lead the process for board appointments and make recommendations to the board (or participate in the voting by the committee) when it is dealing with the appointment of a successor to the chair.

B.2.2. The Corporate Governance or Nomination or other Board committee appointed to carry out the functions set out in B.2.1 should evaluate Board diversity including the balance of skills, experience, independence and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

The Corporate Governance or Nomination Committee or other Board Committee should consider implementing a plan for identifying, assessing and enhancing director competencies. An evaluation of the range of skills, experience and expertise on the board is important when considering new candidates for nomination or appointment. Such an evaluation enables identification of the particular skills that will best increase

board effectiveness. Board renewal is critical to performance, and directors should be conscious of the duration of each director's tenure in succession planning. The Corporate Governance or Nomination or other Board committee should consider whether succession plans are in place to maintain an appropriate balance of skills, experience and expertise on the board.

- B.2.3 A separate section of the annual report should describe the work of the Corporate Governance or Nomination or other Board committee, including the process it has used in relation to board appointments.

B.3 COMMITMENT

Main Principle

All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

Code Provisions

- B.3.1. For the appointment of a Chairman, the Corporate Governance or Nomination or other Board committee should prepare a job specification, including an assessment of the time commitment expected, recognizing the need for availability in the event of crises.
- B.3.2. The terms and conditions of appointment of directors should be made available for inspection by shareholders. The letter of appointment should set out the expected time commitment. Directors should undertake that they will have sufficient time to meet what is expected of them. Their other significant commitments should be disclosed to the board before appointment, with a broad indication of the time involved, and the board should be informed of subsequent significant changes in demands on the Director's time.

B.4 INFORMATION AND PROFESSIONAL DEVELOPMENT

Main Principle

The board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. All directors should receive information on joining the board and should periodically update and refresh their skills and knowledge.

Supporting Principles

The Chairman is responsible for ensuring that the directors receive accurate, timely and clear information. Management has an obligation to provide such information but directors should seek clarification or amplification where necessary.

The Chairman should ensure that the directors continually update their skills and the knowledge and familiarity with the company required to fulfil their role both on the board and on board committees.

The company should provide the necessary resources for developing and updating its directors' knowledge and capabilities.

Under the direction of the Chairman, the company secretary's responsibilities include ensuring good information flows within the board and its committees and between senior management and non-executive directors, as well as facilitating induction and assisting with professional development as required.

The company secretary should be responsible for advising the board on governance matters. Where the board has a dedicated corporate governance committee, or other committee with remit for governance matters, the company secretary should play a key role in guiding the committee on governance matters.

Code Provisions

- B.4.1 New directors should receive a full, formal and tailored induction on joining the board. The Chairman should periodically review and agree with each director their training and development needs.
- B.4.2 The board should ensure that directors, especially non-executive directors, have access to independent professional advice at the company's expense where they judge it necessary to discharge their responsibilities as directors. Committees should be provided with sufficient resources to undertake their duties.
- B.4.3 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are complied with. Both the appointment and removal of the company secretary should be a matter for the board as a whole.

B.5 PERFORMANCE EVALUATION

Main Principle

The board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

Supporting Principle

Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the board, how the board works together as a unit, and other factors relevant to its effectiveness.

The Chairman should act on the results of the performance evaluation by recognizing the strengths and addressing the weaknesses of the board and, where appropriate, proposing new members be appointed to the board or seeking the resignation of directors.

Individual evaluation should aim to show whether each director continues to contribute effectively and to demonstrate commitment to the role (including commitment of time for board and committee meetings and any other duties).

Code Provision

B.5.1 The board should state in the annual report how performance evaluation of the board, its committees and its individual directors was conducted. Evaluation of the board of companies should be externally facilitated at least every five years.

The non-executive directors, led by the lead independent director (where there is one), should be responsible for the performance evaluation of the Chairman.

B.6 RE-ELECTION

Main Principle

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance and the Company's articles of incorporation. The board should ensure planned refreshing of the board.

Code Provisions

B.6.1 All directors should be subject to election by shareholders at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years subject to the Company's articles. The names of directors submitted for election or re-election should be accompanied by sufficient biographical details and any other relevant information to enable shareholders to make an informed decision on their re-election.

B.6.2 Non-executive directors should be appointed for specified terms subject to re-election and to provisions of the Companies Act relating to the removal of a director. The board should set out to shareholders in the papers accompanying a resolution to elect a non-executive director why they believe an individual should be elected. The Chairman should confirm to shareholders when proposing re-election that, following the formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role. Any term beyond six years (e.g. two three-year terms) for a non-executive director should be subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board. Non-executive directors may serve longer than nine consecutive years; (e.g. three (3) three-year terms), subject to annual re-election. Serving more than nine years could be relevant to the determination of a non-executive director's independence.

C. REMUNERATION

C.1 THE LEVEL AND COMPONENTS OF REMUNERATION

Main Principle

Executive directors' remuneration should be designed to promote the long-term success of the company. Performance-related elements should be transparent, and rigorously applied but should not encourage excessive risk taking or risk taking outside of the company's defined risk parameters.

Supporting Principles

The Corporate Governance or remuneration committee or other Board committee that addresses matters of remuneration or compensation should judge where to position their company relative to other companies. But they should use such comparisons with caution, in view of the risk of an upward ratchet of remuneration levels with no corresponding improvement in corporate and individual performance, and should avoid paying more than is

necessary. They should also be sensitive to pay and employment conditions elsewhere in the group, especially when considering annual salary increases.

Code Provisions

Remuneration Policy

C.1.1. In designing schemes of performance-related remuneration for executive directors, the Corporate Governance or remuneration committee or other Board Committee should include provisions that would enable the company to recover sums paid or withhold the payment of any sum, and specify the circumstances in which it would be appropriate to do so.

C.1.2. Levels of remuneration for non-executive directors should reflect the time, commitment and responsibilities of the role. Where remuneration for non-executive directors includes share options or other performance related elements, shareholder approval should be sought in advance and any shares acquired by exercise of the options should be held until at least two years after the non-executive director leaves the board. It should be borne in mind that remuneration of this nature could be relevant to the determination of a non-executive director's independence (as set out in provision B.1.1).

Service Contracts and Compensation

C.1.3. The Corporate Governance or remuneration committee or other Board Committee should carefully consider all elements of compensation obligations (including pension contributions) the company may have to consider in appointing a director in the event of early termination. The aim should be to avoid rewarding poor performance.

C.1.4. Notice or contract periods should be set at one year or less. If it is necessary to offer longer notice or contract periods to new directors recruited from outside, such periods should be reduced to one year or less after the initial period.

C.2 PROCEDURE

Main Principle

There should be a formal and transparent procedure for developing a policy on executive remuneration and for fixing the remuneration packages of individual directors. No executive director should be involved in deciding his or her own remuneration.

Supporting Principles

The Corporate Governance or remuneration or other Board committee (charged with this responsibility) should take care to recognise and manage conflicts of interest when receiving views from executive directors or senior management, or consulting the Chief Executive Officer about its proposals. The Corporate Governance or remuneration committee or other Board committee should also be responsible for appointing any consultants in respect of executive director remuneration.

Code Provisions

C.2.1. The board should establish a Corporate Governance or remuneration committee or other Board committee of at least three, non-executive directors. The Corporate Governance or remuneration or other Board committee should make available to stakeholders its terms of reference, explaining its role and the authority delegated to it by the board.

C.2.2. The Corporate Governance, Remuneration or other Board committee should have delegated responsibility for setting remuneration for all executive directors, including pension rights and any compensation payments. The committee should also recommend and monitor the level and structure of remuneration for senior management. The definition of 'senior management' for this purpose should be determined by the board but should normally include the first layer of management below board level.

C.2.3. At the option of the company, shareholders should have the opportunity of having an

annual non-binding vote on the remuneration policy. This will give shareholders the opportunity of expressing their views about the remuneration policy.

D. ACCOUNTABILITY AND AUDIT

D.1 FINANCIAL REPORTING

Main Principle

The board should present a balanced and understandable assessment of the company's position and prospects.

Supporting Principle

The board's responsibility to present a balanced and understandable assessment extends to interim and other reports to the JSE, to regulators as well as to information required to be presented by statutory and other requirements.

Financial statements should be presented in accordance with accounting standards provided for under the Companies Act and other applicable legislation and guidelines.

Code Provisions

D.1.1 The directors should explain in the annual report their responsibility for preparing the accounts and there should be a statement by the auditors about their reporting responsibilities.

D.1.2 The directors should include in the annual report an explanation of the basis on which the company generates or preserves value over the longer term (the business model) and the strategy for delivering the objectives of the company³.

D.1.3 The directors should report that the business is a going concern, with supporting

³ JSE Rules Appendix 13 on MD&A

assumptions and/or qualifications as necessary.

D.2 RISK MANAGEMENT AND INTERNAL CONTROL

Main Principle

The board is responsible for determining the nature and extent of the principal risks it is willing to take in achieving its strategic objectives. The board should ensure the maintenance of sound risk management and internal control systems⁴.

Code Provisions

- D.2.1. The company's annual report should confirm that a robust assessment of the principal risks facing the company, including those that would threaten its business model, future performance, solvency or liquidity, has been carried out. The report should describe those risks and explain how they are being managed or mitigated.
- D.2.2. Taking account of the company's current position and principal risks, the directors should explain in the annual report how they have assessed the prospects of the company, over what period they have done so and why they consider that period to be appropriate. The directors should state whether they have a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.
- D.2.3. The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness, and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.

⁴ JSE Rules Appendix 13 on MD&A

D.3. AUDIT COMMITTEE AND AUDITORS

Main Principle

The board should establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.

Code Provisions

D.3.1 The board should establish an Audit Committee of at least three, independent non-executive directors. In small companies the company Chairman may be a member of, but not chair the committee in addition to the independent non-executive directors, provided he or she was considered independent on appointment as Chairman. The board should satisfy itself that at least one member of the Audit Committee has recent and relevant financial experience.

D.3.2 The main role and responsibilities of the Audit Committee should be set out in written terms of reference and should include:

- to monitor the integrity of the financial statements of the company, and any formal announcements relating to the company's financial performance, reviewing significant financial reporting judgments contained in them;
- to review the company's internal financial controls and risk management systems.
- where a separate board risk committee is appointed it will comprise of non-executive directors;
- to monitor and review the effectiveness of the company's internal audit function;
- to make recommendations to the board, for it to put to the shareholders for their approval in general meeting, in relation to the appointment, re-appointment and removal of the external auditor and to recommend the remuneration and terms of engagement of the external auditor;
- to review and monitor the external auditor's independence and objectivity and

the effectiveness of the audit process, taking into consideration relevant professional and regulatory requirements;

- to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the board, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken; and
- to report to the board on how it has discharged its responsibilities.

D.3.3 The terms of reference of the Audit Committee, including its role and the authority delegated to it by the board, should be made available on the company's website.

D.3.3.1 The Audit Committee has authority to:

- a) Conduct or authorize investigations into any matters within its scope of responsibility;
- b) Resolve any disagreements between management and the auditor regarding financial reporting;
- c) Pre-approve all auditing and non-audit services provided by the external auditor;
- d) Retain independent professional advisors to advise the committee or assist in the conduct of an investigation;
- e) Seek any information it requires from employees, all of whom are directed to cooperate with the committee's requests, or external parties;
- f) Meet with company officers, external auditors, or outside counsel, as necessary;
- g) Monitor the activities of the internal audit ensuring its objectivity and independence in the performance of its duties;
- h) Ensure the internal audit function reports to the board through the Audit Committee;

- i) Facilitate the chief internal audit executive confirmation to the board directly or through the Audit Committee at least annually on the organizational independence of the internal audit activity.

D.3.4 Where requested by the board, the Audit Committee should provide advice on whether the financial statements, taken as a whole, give a true and fair view of the company's financial affairs.

D.3.5 The Audit Committee should monitor and review the effectiveness of the internal audit activities. Where there is no internal audit function, the Audit Committee should consider annually whether there is a need for an internal audit function and make a recommendation to the board, and the reasons for the absence of such a function should be explained in the relevant section of the annual report.

D.3.6 The Audit Committee should have primary responsibility for making recommendations on the appointment, reappointment and removal of the external auditors. JSE listed companies should consider putting the external audit contract out to tender at least every seven years. If the board does not accept the Audit Committee's recommendation, it should include in the annual report, and in any papers recommending appointment or re-appointment, a statement from the Audit Committee explaining the recommendation and should set out reasons why the board has taken a different approach .

D.3.7 The auditor provides non-audit services, the annual report should explain to shareholders how auditor objectivity and independence is safeguarded.

D.3.7.1 A separate section of the annual report should describe the work of the Audit Committee in discharging its responsibilities. The report should include:

- the significant issues that the Audit Committee considered in relation to the financial statements, and how these issues were addressed.;
- an explanation of how it has assessed the effectiveness of the external audit process and the approach taken to the appointment or reappointment of the external auditor, and information on the length of tenure of the current audit firm and when a tender was last conducted; and
- if the external auditor provides non-audit services, an explanation of how auditor objectivity and independence are safeguarded.

E. RELATIONS WITH SHAREHOLDERS

E.1 DIALOGUE WITH SHAREHOLDERS

Main Principle

There should be regular communication between the company and its shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.⁵

Supporting Principles

Whilst recognising that most shareholder contact is with the chief executive, finance director and corporate secretary, the Chairman (and the lead independent director (where there is one) and other directors as appropriate) should maintain sufficient contact with shareholders to understand their issues and concerns.

The board should keep in touch with shareholder opinion in whatever ways are most practical

⁵ Nothing in these principles or provisions should be taken to override the general requirements of law to treat all shareholders equally with respect to access to information.

and efficient and should establish effective guidelines for doing so.

Code Provisions

E.1.1 The Chairman should ensure that the views of shareholders are communicated to the board as a whole.

E.1.2 The board should state in the annual report the steps they have taken to ensure that the members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company, for example through direct face-to-face contact, analysts' or brokers' briefings and surveys of shareholder opinion.

E.2 CONSTRUCTIVE USE OF THE GENERAL MEETING

Main Principle

The board should use General Meetings to communicate with Investors and to encourage their participation.

Code Provisions

E.2.1. The company should provide the shareholders with the information on the rules with regard to the voting procedures.

E.2.2. At any general meeting, the company should propose a separate resolution on each substantially separate issue, and should in particular propose a resolution at the annual general meeting ("AGM") relating to the report and accounts. For each resolution, proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to withhold their vote. The proxy form and any announcement of the results of a vote should make it clear that a 'vote withheld' is not a vote in law and will not be counted in the calculation of the proportion of the votes for and against the resolution.

E.2.3 The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted. For each resolution, after a vote has been taken, except where taken on a poll, the company should ensure that the information regarding the resolutions of the meeting is given at the meeting and disseminated as required.

When, in the opinion of the board, a significant⁶ proportion of votes have been cast against a resolution at any general meeting, the company should explain the actions it intends to take to understand the reasons behind the vote result.

E.2.4 The Chairman should arrange for the Chairmen of board committees to be available to answer questions at the AGM and where required for all directors and external auditors to attend.

E.2.5 The company should arrange for the Notice of the AGM and related papers to be sent to shareholders at least 21 days⁷ before the date of the meeting. For other general meetings this should be at least 14 days in advance or in accordance with its Articles of Association.⁸

F. TIMELY AND BALANCED DISCLOSURES

Main Principle

Companies should promote timely and balanced disclosure of all material matters concerning the company.

⁶ Significant means 25% or more of the class or classes voting

⁷ Companies Act, First Schedule sec. 56 “The notice shall be exclusive of the day it is served or the day it is deemed to be served and of the day for which it is given.”

⁸ Companies Act section 129(1)(b)

Supporting Principles

Companies should put in place mechanisms designed to ensure compliance with legislation, regulations and where applicable with JSE Listing Rule requirements such that:

- all investors have equal and timely access to material information concerning the company -including its financial position, performance, ownership and governance
- company announcements are factual and presented in a clear and balanced way.

"Balance" requires disclosure of both positive and negative information.

Code Provisions

F.1 Listed Companies should establish written policies designed to ensure compliance with JSE Listing Rule disclosure requirements and to ensure accountability at a senior executive level for that compliance and disclose those policies or a summary of those policies.

F.2 There should be vetting and authorisation processes designed to ensure that company announcements:

- are made in a timely manner
- are factual
- do not omit material information
- are expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

F.3 Companies should include commentary on their financial results to enhance the clarity and balance of reporting. This commentary should include information needed by an investor to make an informed assessment of the company's activities and results.

G. CORPORATE SUSTAINABILITY AND ETHICS

Main Principle

The board should ensure that the company acts ethically and responsibly with honesty, integrity and in a manner consistent with the legitimate interests and expectations of stakeholders and the broader community. The Board should ensure that the company is and is seen to be a good corporate citizen.

Supporting Principles

Stakeholder interests include employee, environmental, social, governance and economic matters. The Board needs to recognize that stakeholders contribute to company performance in different ways and should therefore take appropriate measures to protect their interests and respect their rights during the decision-making process. The best interests of the company should be understood within the parameters of the company being a sustainable enterprise and a responsible citizen.

Code Provisions

G.1 CORPORATE SOCIAL RESPONSIBILITY

The board should:

- i. consider not only financial performance but also the impact of the company's operations on society and the environment;
- ii. consider the protection, enhancement and investment in the well-being of the economy, society and the environment;
- iii. ensure that the company's performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights;
- iv. ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good corporate citizenship;
- v. ensure that measurable corporate citizenship programmes are implemented; and
- vi. ensure that management develops corporate citizenship policies.

G.1.1 Codes of Conduct /Ethics

The board should adopt high standards of business ethics through codes of conduct/ ethics (or similar instrument) and oversee a culture of integrity, notwithstanding differing ethical norms and legal standards in various countries. This should permeate all aspects of the company's operations, ensuring that its vision, mission and objectives are ethically sound and demonstrative of its values. Codes should be effectively communicated and integrated into the company's strategy and operations, including risk management systems and remuneration structures.

G.2 DECISION-MAKING

Main Principle

Companies should actively promote ethical and responsible decision-making.

Supporting Principles

In developing the company's Code of Ethics companies should make ethical and responsible decisions, that not only comply with their legal obligations, but should also consider the reasonable expectations of their stakeholders including: shareholders, employees, customers, suppliers, creditors, consumers and the broader community in which they operate.

It is a matter for the board to consider and assess what is appropriate in each company's circumstances. It is important for companies to demonstrate their commitment to appropriate corporate practices and decision making.

Code Provisions

G.2.1 Companies should:

- comply with their legal obligations and have regard to the reasonable expectations of their stakeholders.
- publish the policy concerning the issue of board and employee trading in company securities and in associated products, including products which operate to limit the economic risk of those securities.

G.2.2 **Companies should clarify** the standards of ethical behaviour required of the board, senior executives and all employees and encourage the observance of those standards by establishing a code of conduct and disclose the code or a summary of the code as to:

- the practices necessary to maintain confidence in the company's integrity
- the practices necessary to take into account their legal obligations and the reasonable expectations of their stakeholders
- the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.

G.2.3 **The board** has a responsibility to set the ethical tone and standards of the company. Senior executives have a responsibility to implement practices consistent with those standards. There should be a Company Code of Conduct for all directors, senior executives and staff. Company codes of conduct, which state the values and policies of the company can assist the board and senior executives in this task and complement the company's risk management practices.

G.2.4 **Companies should formulate** policies on appropriate behaviour of directors, senior executives and employees. Companies should encourage the integration of these policies into company-wide management practices. A code of conduct supported by appropriate training and monitoring of compliance with the code are effective ways to guide the behaviour of directors, senior executives and employees and demonstrate the commitment of the company to ethical practices. Companies should ensure that

training on the code of conduct is updated on a regular basis.

G.3 BRIBERY AND CORRUPTION

The board should ensure that management has implemented appropriately stringent policies and procedures to mitigate the risk of bribery and corruption or other malfeasance acts. Such policies and procedures should be communicated to shareholders and other interested parties.

G.4 WHISTLEBLOWING

The board should ensure that the company has in place a confidential mechanism whereby an employee, supplier or other stakeholder can (without fear of retribution) raise issues with regard to potential or suspected breaches of a company's code of ethics or local law.

G.5 POLITICAL LOBBYING

The board should have a policy on political engagement, covering lobbying and donations to political causes or candidates where allowed under law, and ensure that the benefits and risks of the approach taken are understood, monitored, transparent and regularly reviewed.

G.6 EMPLOYEE SHARE DEALING

The board should develop clear rules regarding any trading by directors and employees in the company's own securities. Individuals should not benefit directly or indirectly from knowledge which is not generally available to the market.

G.7 BEHAVIOUR AND CONDUCT

The board should foster a corporate culture which ensures that employees understand their responsibility for appropriate behaviour. There should be appropriate board level and staff training in all aspects relating to corporate culture and ethics. Due diligence and monitoring programmes should be in place to enable staff to understand relevant codes of conduct and apply them effectively to avoid company involvement in inappropriate behaviour.

END

APPENDIX 1

SPECIFIC REQUIREMENTS FOR DISCLOSURE IN THE ANNUAL REPORT

The following material should be included in the corporate governance statement or in the body of the company's annual report:

- a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated to management (A.1.2)
- the names of the chairperson, the deputy chairperson (where there is one), the Chief Executive, the lead independent director and the chairpersons and members of Board committees (A.1.3)
- the skills, experience and expertise relevant to the position of director held by each director in office at the date of the annual report
- the period of office held by each director in office at the date of the annual report
- the number of meetings of the board and those committees and individual attendance by directors (A.1.3)
- the names of the directors considered by the board to constitute independent directors (B.1.1)
- the existence of any of the relationships listed in B.1.1 and an explanation of why the board considers a director to be independent, notwithstanding the existence of those relationships
- the other significant commitments of the chairperson and directors and any changes to them during the year (B.3.1)
- how performance evaluation of the board, its committees and its directors has been conducted (B.5.1)
- the names of members of the Corporate Governance or Nomination or other Board committee and their attendance at meetings of the committee, or where a company does not have a nomination committee

SPECIFIC REQUIREMENTS FOR DISCLOSURE IN THE ANNUAL REPORT (cont'd)

- how the functions of a nomination committee are carried out
- the steps the board has taken to ensure that members of the board, and in particular the non-executive directors, develop an understanding of the views of major shareholders about their company (E.1.2)
- a statement as to whether there is a procedure agreed by the board for directors to take independent professional advice at the expense of the company (B.4.2)

THE ANNUAL REPORT SHOULD ALSO INCLUDE:

- a separate section describing the work of the Corporate Governance or Nomination or other Board committee, including the process it has used in relation to board appointments (B.2.2)
- an explanation from the directors of their responsibility for preparing the accounts and a statement by the auditors about their reporting responsibilities (D.1.1)
- a statement from the directors that the business is a going concern, with supporting assumptions or qualifications as necessary (D.1.2)
- a report that the board has conducted a review of the effectiveness of the group's system of internal controls (D.2.1)
- a separate section describing the work of the Audit Committee in discharging its responsibilities (D.3.3)
- where there is no internal audit function, the reasons for the absence of such a function (D.3.5)
- where the board does not accept the Audit Committee's recommendation on the appointment, reappointment or removal of an external auditor, a statement from the Audit Committee explaining the recommendation and the reasons why the board has taken a different position (D.3.6) and
- an explanation of how, if the auditor provides non-audit services, auditor objectivity and independence is safeguarded (D.3.7)

The following information should be made available (which may be met by placing the information on a website that is maintained by or on behalf of the company):

- the terms of reference of the Corporate Governance or nomination, remuneration and Audit Committees, explaining their role and
- the authority delegated to them by the board (B.2.1, C.2.1 and D.3.1)
- the terms and conditions of appointment of non-executive directors (B.3.2), and
- where remuneration consultants are appointed, a statement of whether they have any other connection with the company (C.2.1)

The board should set out to shareholders in the papers accompanying a resolution to elect or re-elect directors:

- sufficient biographical details to enable shareholders to take an informed decision on their election or re-election (B.6.1)
- why they believe an individual should be elected to a non-executive role (B.6.2), and
- on re-election of a non-executive director, confirmation from the chairperson that, following the formal performance evaluation, the individual's performance continues to be effective and to demonstrate commitment to the role, including commitment of time for board and committee meetings and any other duties (B.6.2)

The board should set out to shareholders in the papers recommending appointment or reappointment of an external auditor:

- if the board does not accept the Audit Committee's recommendation, a statement from the Audit Committee explaining the recommendation and from the board setting out reasons why they have taken a different position (D.3.6)

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