

# Averting the overprescription of UK corporate governance norms

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## ABSTRACT

This paper examines the continuing practical relevance of the 'comply or explain' doctrine underlying the UK's Combined Code on Corporate Governance. In particular, it assesses whether the progressive growth in detail and rigidity of some of the Code's key principles and provisions over recent years has undermined the characteristic flexibility of this self-regulatory, market-enforced body of norms. The analysis concentrates primarily on Principle A.2 of the Code, which regulates the division of leadership responsibilities (DoLR) between the company's chairman and chief executive officer (CEO). The application of this Prin-

iple is illustrated with reference to the recent case of the British retailer Marks & Spencer plc (M&S), the decision of which to promote its current CEO, Sir Stuart Rose, to the dual office of executive chairman effective from 2008 onwards was met with widespread investor hostility. It is submitted that the M&S fallout highlights the potential for intractable 'clashes' to occur between equally ranking Code Principles, and that such clashes are a source of costly and potentially divisive confusion for investors and boards alike. The paper highlights the need to identify a unifying macro-Principle of the Code as an objective yardstick for settling conflict between Code norms. It also assesses recent reforms to the Code and UK Listing Rules implemented, respectively, by the Financial Reporting Council (FRC) and Financial Services Authority (FSA), which were aimed at enhancing the Code's flexibility and mitigating the recent tendency towards 'overprescription' of its key governance principles. It will be concluded that, while these reforms represent a moderate step in the right direction towards combating the compliance difficulties faced by investors and boards, a more fundamental reconfiguration of the Code's structure is ultimately called for.

**Keywords:** UK corporate governance; Combined Code; flexibility; board leadership; investor relations; regulatory structure

