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DEPARTMENT OF TRADE AND INDUSTRY  
Room 5.R.15  
1 Victoria Street  
London SW1H 0ET

24th June 1998

[TRANSCRIPT]

Dear Ms Hutchinson,

"MODERN COMPANY LAW FOR A COMPETITIVE ECONOMY"

Thank you for your invitation to respond to the above Consultation Document which we believe is timely and the objectives of which we fully support.

The Document invites comments (p.2) under three heads and we respond in that manner below:-

1. Proposed terms of reference
2. Handling of the exercise
3. Matters of substance.

1. PROPOSED TERMS OF REFERENCE.

We broadly agree with the proposed terms of reference and in particular support the suggestion made on page 10 that "some legal underpinning" may be needed in the areas of "the duties of directors, the conduct of AGMs and shareholder control over directors' pay".

We would like to make just one point regarding the objectives set out in Chapter 5. The declared objective is to "promote a framework which.....supports the creation, growth and competitiveness of British companies...". We have no quarrel with this but we do strongly believe that it is equally important, if not more so, to be explicit about the objective of value creation. Our argument goes like this.

It is possible for companies to grow and be competitive but fail to create value. To cite an example, many commentators have now, somewhat belatedly, realised that the much admired Japanese 'framework' has nurtured the destruction of some Y21,000bn of value since 1990 (see Financial Times 6/5/98). Japanese companies nevertheless grew large and competitive. Growth and competitiveness are, of course, desirable objectives but we would argue that value creation should rank at least as important, if not more so. From value creating companies comes more investment, more employment, more taxes, more consumption and more new value creating companies. All those with an 'interest' in such companies - sometime referred to as 'stakeholders' - clearly benefit from this 'virtuous circle'. Shareholders benefit too. So we would like to see an objective of value creation specifically incorporated in the terms of reference.

## 2. HANDLING OF THE EXERCISE

We wish to make the case for our own close involvement with the review. The number of individual shareholders in the UK has greatly increased over recent years and since the equity of all companies is ultimately owned by individual citizens, we believe it is most important that their 'voice' should be clearly heard in the review process. Although UKSA cannot claim to speak for every single private shareholder, we do believe that our members represent a particularly committed, experienced and knowledgeable 'slice' of the private shareholder population. In short, our members view their 'ownership' (or, perhaps more correctly in this context, their 'membership') responsibilities very seriously.

Since 1992, when UKSA was established, we have made substantial responses to nine DTI consultation documents which have dealt with reforming various aspects of company law. Similarly we have responded to a number of such documents issued by the Law Commission. We have also made very substantial responses to each of the reports issued by the committees which have reviewed corporate governance, namely Cadbury, Greenbury and Hampel, together with the report of the committee on private share ownership (the Weinberg report). Responses to many important consultation documents issued by the London Stock Exchange should also be mentioned.

Turning to your own consultation process, we have to repeat the point made by ourselves and many other commentators that the committees which reviewed corporate governance did not include any direct private shareholder representation. We believe that this was a serious mistake and one which we hope will not be repeated.

## 3. MATTERS OF SUBSTANCE

As mentioned in 1 above, we have contributed a number of responses to previous DTI Consultation Documents. Two of the most important, in terms of their containing 'matters of substance' touching closely on those to be dealt with in your Company Law Reform project, were the two documents called "Shareholder Communications at the Annual General Meeting" and "Private Shareholders - Corporate Governance Rights".

Our responses to these documents contained a number of proposals which are highly relevant, particularly to the three issues which you have highlighted, that is "the duties of directors, the conduct of AGMs and shareholder control over directors' pay". We assume, at this early initial response stage, that you would prefer us to re-present our earlier proposals and arguments for changes in company law in an appropriate form for a later stage of your new consultation exercise. We hope this assumption is correct.

We look forward to contributing further to your work as it develops.

Yours sincerely,

Donald B Butcher  
President