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**FOSTERING AN APPROPRIATE REGIME FOR SHAREHOLDER
RIGHTS**
**(Second Consultation by the Services of the Internal Market Directorate
General – MARKT/13.05.2005)**

Response from United Kingdom Shareholders' Association

The United Kingdom Shareholders' Association Limited (UKSA) is the leading independent organisation which represents the interests of private shareholders across the whole of the United Kingdom. We campaign to protect the rights of shareholders in public companies, and to promote improved standards of corporate governance. UKSA is solely owned by and financially supported by its individual members.

As will be seen from the following detailed response, UKSA strongly supports the general thrust of the Consultation Document. Indeed one of our major concerns is the increasing tendency for private shareholders to lose their ownership rights. Nevertheless we are pleased to see, in the Synthesis of the First Consultation, the strong view that any directive should concentrate on high-level principles only. Indeed we believe that the alternative approach of making a recommendation only, as mentioned at the end of Section 2 of that Synthesis, deserves serious consideration.

1. INTRODUCTION. Section 2 of the Introduction refers to the problems of securing voting rights in cross-border holdings. We suggest that, as background to their work, the Commission should also keep in mind that the problem is not confined to cross-border situations. In the United Kingdom at least, it is increasingly difficult for shareholders to exercise their rights, even though they are resident in the same state as the issuer. This is primarily because stockbrokers prefer to promote the use of pooled nominee accounts and there are many obstacles to such shareholders exercising their rights. Moreover, in the case of the popular tax-exempt vehicles for holding shares, known as "PEPs" and "ISAs", it is compulsory to have the shares in nominee names.

UKSA—The independent voice of the private shareholder

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In its latest consultation paper (Company Law Reform – issued by the Department of Trade and Industry in March 2005), the British Government proposes to remove legal obstacles for companies that wish to allow nominees to pass on their rights to the ultimate owners. This means that ultimate owners will still only obtain rights as investors if both the company and the nominee organisation co-operate. UKSA has said that this is not adequate and those holding shares through a nominee need a legal entitlement to the rights of an on-the-register shareholder.

Answers to Specific Questions

We now proceed to answer the specific questions in the Second consultation using the numbers and not repeating the questions.

II 1. SCOPE Yes. There is no need to extend the scope beyond traded companies and we agree that UCITS should not be covered. Close-ended investment companies, which are common in the UK, are themselves quoted companies and should be treated as such for this purpose. We agree that there is no need to attempt to influence Member States in whatever they choose to legislate for non-traded companies.

II 2. THE ULTIMATE INVESTOR The suggestion that the absence of legal rights does not cause acute difficulties is contrary to our experience. We find that it is extremely difficult, and often impossible, for shareholders using nominee holdings to exercise their rights and we believe that nothing short of a legal right will produce the desired result.

We agree with the definition of Ultimate Investor proposed by UNIDROIT. The Consultation seems to be suggesting that difficulties in defining the Ultimate Investor are major obstacles to giving rights. We do not believe that such difficulties should be allowed to stand in the way of progress in this respect.

It must be remembered that there will be many cases where shareholders do not wish to exercise those rights, or wish to delegate those rights, including what are known in the UK as “blind trusts” where, for various reasons, the ultimate investor may not know what his investments are. However, if any Directive is confined to principles, this would be a matter that could be left to be dealt with at national level.

II 3.1 Stock lending. We agree that stock should never be lent without the ultimate investor having given permission but this would normally be a general consent. If prior permission had to be obtained on each specific occasion in most cases it would prevent stock lending taking place at all.

II 3.2 Depository receipts. We agree with the proposed minimum standard.

II 4 PRE GENERAL MEETING COMMUNICATIONS

- **Notice Periods** Present law in the UK requires 21 days (all days not just business days) for an Annual General meeting and 10 days for an Extraordinary General Meeting. While we do not wish to see these periods shortened, in general we do not see that they need to be extended.

With ever-increasing use of electronic communication, cross-border rights need not depend on longer notice periods.

- **Content of the Notice.** We agree the proposed minimum standards. It is difficult to imagine that anything less would seriously be considered. All information must be available on the company's website.

- **Information relevant to the General meeting.** We agree the proposed minimum standards.

- **Dissemination and language.** We agree the proposed minimum standard except that the phrase "...unless the General Meeting decides to the contrary" should be replaced by "unless the shareholders have so decided in advance." Possibly there should be a more precise definition of an acceptable language than one "customary in the sphere of international finance" on which there could be considerable differences of opinion. It can be argued that English has become so much the language of business that it should be compulsory.

- **Notices on websites.** We agree the proposed minimum standards.

II 5 SHARE BLOCKING. We agree the proposed minimum standards. We would like to see an intention to make the record date and the date of the meeting coincide. It is undesirable that shareholders should be able to exercise a vote and sell the shares before the vote becomes effective.

II 6.1 Electronic participation in General Meetings We agree the proposed minimum standards.

II 6.2 Right to ask questions. At first sight this is attractive but some would argue that it could prove to be unduly onerous for some companies. But private investors do find it valuable to have this right (as it exists in the UK at least in terms of asking questions at the AGM). We suggest that this is a matter that could be left to Member States.

II 6.3 Rights to add items to the agenda. This minimum standard is sufficiently flexible to allow variations within member states and we therefore support it

II 6.4 Voting

- **Voting by correspondence.** We agree the proposed minimum standards.

- **Proxies.** We agree with all the proposed minimum standards except that we have some comments on Number 5. In the UK proxy counts are usually undertaken by the company's registrar. We feel that this provides sufficient independence, particularly as there is a proposal to have the ability to call for an independent audit of the figures in future. It is current UK practice for the Board to be aware of the results of the advance proxy voting before the meeting although normally a show of hands would take place before the proxy result is revealed to the shareholders. This system generally works well.

II 7 POSITION OF INTERMEDIARIES

We agree all the proposed definitions and minimum standards under this heading. We especially welcome the proposal that the legal or natural person on whose behalf shares are held shall have an absolute right to be given a power of attorney. We are pleased to note that

the proposed minimum standard in this section is more positive than the more tentative approach discussed in Section II 2

II 8 Dissemination of the voting results. We agree that there should be an obligation to put results on the website but not to publish them otherwise.

II 9 OTHER SUGGESTIONS. We have nothing further that we wish to add.

Yours sincerely

David Blundell
Chairman