

Position paper: Share Buy- Backs

(From Update 2002/2)

1. Because of the variety of circumstances in which companies return cash to shareholders, UKSA takes no position of principle for or against buy-backs. Where a company does buy back its shares, UKSA believes that it should offer all shareholders a realistic opportunity to participate, or provide compelling reasons for not doing so.

2. UKSA believes that buy-backs (or proposals to give a company the power to buy back at some time in the future) have to be considered on the merits of each individual case.

3. To enable shareholders to consider those merits, each company proposing to buyback its shares should circulate shareholders with the reasons favouring the proposal, as well as listing any possible disadvantages (or confirming that none are foreseen). Specific and measurable objectives should be set out and vague generalisations avoided. The anticipated consequences (e.g. the effect on gearing, future profits and dividends, credit rating etc) should be stated – UKSA recognises that, at the time of the proposal, this statement may only be illustrative. Risks should be explicitly acknowledged.

4. UKSA recognises that the method chosen by directors (to put to shareholders for their approval) to return surplus cash to shareholders is a matter to be decided by the directors, having regard to the best

interests of the company and the body of shareholders as a whole. It is important that shareholders know that the method chosen is in the company's and their own best interests, and that they are confident that the motive for that choice is not, for example, to protect management against an unwelcome take-over or to improve management benefits under option or other remuneration schemes. UKSA believes it is vital that directors formally confirm that they have taken into consideration the variety of factors affecting their shareholders who will include, apart from institutions, individuals, trusts and charities, all with differing beneficial and taxation influences.

5. Directors should explain fully to shareholders why one method of returning cash to shareholders is preferred over another – why a buy-back is preferred to a special dividend or a return of capital, and why one buy-back method is preferred to another.

6. UKSA believes that, where the buy-back method of returning cash to shareholders has been selected, it should be a general presumption that the preferred means is a proportional buy-back (or universal tender) which gives all shareholders an equal opportunity to participate. Where this method is not adopted, an especially robust explanation should be given to shareholders. UKSA strongly believes that the use of market purchases in a buy-back will usually benefit only institutional shareholders – the continuing use of this practice will persuade private shareholders to speak out firmly against such proposals, and to vote against enabling resolutions.

7. Directors should bear in mind the risk (experience has shown this has become a tendency) of purchasing their company's shares shortly before a significant fall in the share price. Where this has been done in a market purchase, rather than by a

proportional offer or universal tender, the sellers will have benefitted at the expense of continuing shareholders who will, understandably, feel aggrieved. To involve all shareholders in the pricing decision, companies should always include the maximum price that will be paid as an absolute figure (not as a formula related to the market price) in buy-back proposals presented to shareholders for approval.

8. Where a buy-back has been made, the annual report covering that financial year should record, for each of the 12 months, the number of shares purchased and the average price paid in that month as well as the percentage of the total shares in issue at the beginning of the financial year represented by the total shares purchased during it (allowance being made for any significant changes in the share capital during the year for other reasons).

9. Directors should report on the extent to which the buy-back programme has achieved the objectives set out when the authority was given to them (para. 3 above).